US PATENT & TRADEMARK OFFICE
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U.S.Patent Office. M.H.

Ex parte Marshall J. Kinney.

Trade-Mark for Canned Salmon.

Petition.

Application for registration filed June 26, 1895.

Messrs. A. H. Evans & Co. for applicant.

This is a petition taken from the examiner's refusal to register as a trade-mark for salmon the symbol "Rosebud." The examiner's refusal is based upon the fact that the applicant is trying to have registered two symbols in one application, the representation of a rosebud and the word rosebud. The essential features of the application are set forth in alternative forms.

In refusing registration the examiner was following precedent, although some of the cases turn on the question whether the word and the figure are true alternatives. It seems that the trade-mark as offered is, so far as appears, a lawful common law mark, and where the prescribed statutory requisites are present, it is thought that the administration of the law should be reasonably liberal concerning registration.

I incline to adopt his view, and the petition is granted.

John S. Seymour,

August 3, 1895. Commissioner.

90

Serial No. 49,470 Paper No. 8

Commr's Decision

Dated Aug. 3, 1895.

Marshall J. Kinney

Recorded Vol. 57, p. 255.

No. 17,228. M.H.

U.S.Patent Office.

Lown v. The Ohio Coffee & Spice Company.

Trade-Mark for Coffee.

Appeal on Motion.

73 O.G. 1136

Application of Wm. G. Lown filed May 17, 1895.

Application of The Ohio Coffee & Spice Co. filed May 10, 1895.

Mr. Frank T. Browning for Lown.

Mr. Frank G. Fullington for The Ohio Coffee & Spice Co.

This is an appeal from the decision of the examiner of trade-marks refusing to dissolve the above entitled interference. The essential feature of Lown's application is said to be the word "Capitol". The essential feature of the application of the Ohio Coffee & Spice Company is not said to be the words "Capital Coffee" and a group of American flags at each end thereof.

It is true that the marks as shown are different, but it is also true that "the short phrase between the buyer and seller" would be essentially the same, as the difference in sound between "Capitol" and "Capital" is too small to be noticed by the ordinary purchaser.

The decision of the examiner of trade-marks is affirmed.

S. T. Fisher.

Assistant Commissioner,

now Acting Commissioner.

August 24, 1895.

April 4, 1895. S.E.T.

U.S.Patent Office.

Ex parte Roasted Cereals Co.

Trade-Mark for Roasted Cereals.

Petition.

Application for registration filed October 28, 1892, No. 42,907.

Mr. W.W.Hoover and Messrs. Foster & Freeman for applicants.

The Roasted Cereals Company, the applicant for the registration of this trade-mark, transferred all its rights, privileges, good-will and trade-mark to the Catskill Mill Company, and abandoned the application in favor of the Catskill Mill Company. This latter company requested that the certificate of registration of the trade-mark issue in its name and that the government fee paid by the Roasted Cereals Company be applied to the registration of the mark in the name of the Catskill Mill Company.

Upon the refusal of the chief clerk to grant the request to transfer the fee, this petition is taken.

The chief clerk based his action on the decision in the case of ex parte Coventry Machinist Company, 59 O.G., 1923; C.D., 1892, 137, on the ground that to transfer the fee, as requested in the present case, would be practically the same thing as refunding

it after an application had been filed and fee paid for this trade-mark by the Catskill Mill Company. There is no law for refunding fees in trade-mark cases and the practice of the office is clearly against the return of the fees, except where the fee has been paid by mistake, which is not the case here. (See, in addition to the case cited by the chief clerk, the cases of ex parte McDaniel & Morrow, 54 MS. Dec., 161, and ex parte Zwack & Co., 55 MS. Dec., 158.)

But the question here is not one of refunding a fee or transferring a fee from one application to another, there being only one application under consideration. The sole question is one of issuing a certificate of registration to an assignee. In fact, the petition itself now contends that it does not ask for a return or transfer of the fee, but that it may be allowed to intervene in the proceedings and become as a matter of record, as it is in fact, the real petitioner; in other words, that the certificate of registration issue to the Catskill Mill Company.

The Catskill Mill Company is the assignee of the original applicant and to grant this request and issue the certificate to this company would be a clear violation of Rule 16 of Trade-Mark rules, and the practice of the office as indicated in ex parte Spinner, 35 MS. Dec., 15; ex parte Bassett, 55 O.G., 997, and ex parte Sheehy, 56 MS. Dec., 32.

If it is the desire of the interested parties that a certificate of registration issue to the Catskill Mill Company, the

said company should file an application in its own name and pay the required fee.

The request of the petitioner that the certificate issue to it is denied.

S. T. Fisher,

Acting Commissioner.

September 7, 1895.

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Serial No. 42,907 Paper No. 15

Commr's Decision,

Dated Sept. 7th 1895.

Roasted Cereals Co.

Recorded Vol. 57, p. 455.

APPLICATION
of
Frank P. Hendley

72 O.G. 1654

Decided August 27, 1895.

Recorded Vol. 57, p. 407.

Fisher, Assistant Commissioner.

This is an appeal from the decision of the examiner of trade-marks refusing to register the word "Cloverdale" as a trade-mark for canned fruits and vegetables. The refusal of the examiner was based upon the holding of the Supreme Court in Columbia Mill Co. v. Alcorn, 65 O.G., 1916, C.D., 1893, 672, to the effect that "merely geographical names cannot be appropriated and made the subject of an exclusive property."

Geographical names may, for convenience, be divided into three classes: First, those that are well known and in common use, such, for example, as United States, New York, San Francisco, &c. The law is settled that words coming under this class ought not to be registered. The second class includes words which in their primary significance are not geographical, even though they may appear in the Postal Guide or similar publications. Such words as Trilby, Creole, Puritan, Volunteer, are good examples of this class. These words, it seems to me, ought not to be refused regis-

tration on the ground that they are geographical, since it cannot be said that they are "words in common use as designating locality or section of a country." The third class would logically occupy a position between the two classes mentioned above, and it consists of words which primarily have a geographical meaning, for example, terms ending or compounded with such words as city, town, shire, mount or mont. This class would include such words as Lake City, Charleston, Hampshire, Vermont. Such words, I think, should not be registered, for the reason that they are clearly geographical in their primary significance, even if it cannot be said that they are widely enough known to come strictly under the first class.

It seems to me that the word in question, "Cloverdale," clearly comes under the third class, and the decision of the examiner refusing registration is therefore affirmed.

September 6, 1895. S.E.T.

U.S.Patent Office.

Ex parte Frank P. Harned.

Trade-Mark.

Petition.

Application for registration filed June 25, 1895, No. 49,462.

Mr. J. Walter Douglass for applicant.

This is a petition taken from the action of the examiner refusing to register the words "Astringent Pencil" "applied to the article in the form of a stick".

The examiner has refused registration on the ground that the words in question are descriptive. The applicant claims that the article upon which he wishes to use the trade-mark is a stick or cylinder and not a pencil, because it is not tapered at the end. I find, however, that the term "pencil" is commonly applied to medical preparations regardless of the fact whether such preparations are to be in the form of cylinders or of cones. For example, on pages 281, 1669, and 1723 of the fifth edition of the National Dispensatory, published in 1894 by Lea Brothers & Co., in Philadelphia, a copy of which is in this office, the word "pencil" is used as

applied to cylinders.

The decision of the primary examiner is therefore affirmed.

S. T. Fisher,

Acting Commissioner.

September 7, 1895.

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Serial No. 49462 Paper No.

Commr's Decision

Dated Sept. 7th 1895.

F. P. Harned.

Recorded Vol. 57, p. 457.

September 10, 1895. S.E.T.

U.S.Patent Office.

Ex parte James H. Spencer.

Trade-Mark for Plug Tobacco.

Petition.

Application for registration filed April 22, 1895, No. 49,023.

Mr. James L. Norris for applicant.

This is a petition from the decision of the examiner of trade-marks refusing to register a mark for plug tobacco consisting of a "pictorial representation of the head of an Indian surmounted by a crown of feathers, and the words 'North America' arranged in a curved line above the head of the Indian", the said trade-mark being stamped in the plug of tobacco.

The examiner has refused to register this mark on the ground that the words "North America" are geographical and that the head of an Indian has been previously registered to Musselman & Co., No. 6,588, September 17, 1878. It is clear that the words "North America" have a geographical significance and cannot therefore be used as a trade-mark. Applicant's mark, however, consists not in these words alone, but when used in connection with a representation of a head of an Indian. This representation of applicant's

mark is shown in the reference cited, and although it is not the sole feature of either, yet it appears to me to be a prominent feature and one liable to cause confusion in the mind of the ordinary purchaser if both marks were in common use. Applicant has laid great stress upon the fact that he stamps his mark upon a plug of tobacco, while in the reference cited the stamp is attached to the plug or boxes containing the tobacco. It is believed, however, that the manner of applying a trade-mark to the goods does not confer registrability on trade-marks not otherwise registrable.

The action of the examiner in refusing to register the mark is therefore affirmed.

There seems to be another reason for refusing to register the mark. If the tobacco is not known by the name of "North America", as applicant contends it is not, these words in connection with the representation of an Indian head placed on the tobacco would seem to give the name of "North American Indian" to the tobacco. This being so the ordinary purchaser would be under the impression that the tobacco was grown or manufactured by the North American Indians or that these people were in some way connected with the tobacco. If such is the fact then one of these Indians has as much right to it as another, and neither applicant nor any one else has the exclusive right to use said symbol as his trade-mark. If, on the other hand, the North American Indians are in no way connected with the tobacco, the mark is used deceptively and should not be registered.

S. T. Fisher,
Acting Commissioner.

September 20, 1895.

59

Serial No. 49023 Paper No.

Commr's Decision.

Dated Sept. 20, 1895.

James H. Spencer.

Recorded Vol. 57, p. 491.

S.E.T.

U.S.Patent Office.

Ex parte Charles H. Langdon and George C. Batcheller.

Trade-Mark for Corsets.

Petition.

Application for registration filed February 8, 1890, No. 29,824.

Mr. S. D. Cozzens for applicants.

This case has been pending for several months and the applicants have not urged it in any way although they have been repeatedly called upon to file a brief or make an argument.

The petition is therefore dismissed.

S. T. Fisher,

Acting Commissioner.

September 13, 1895.

158

Serial No. 29824 Paper No.

Commr's Decision

Dated Sept. 13th 1895.

Langdon & Batcheller.

Recorded Vol. 57, page 478.

September 13, 1895.

U.S.Patent Office.

Ex parte Charles L. Heinle & Co.

Trade Mark for Root Beer.

Petition.

Application for registration filed April 2, 1895, No. 48,878.

Messrs. C. A. Snow & Co. for applicant.

This is a petition from the decision of the examiner of trade marks refusing to register the letters "O.K." as a trade mark for root beer.

The examiner's objection is that the symbol is descriptive, but it seems to me that it has a sufficiently arbitrary and fanciful significance to warrant registration.

The decision of the examiner of trade marks is therefore reversed.

S.T.Fisher

Acting Commissioner.

September 13, 1895.

September 13, 1895. S.E.T.

U.S.Patent Office.

Ex parte John Yung, Jr.

Trade-Mark for Weather Strips.

Petition.

Application for registration filed May 8, 1895, No. 49,116.

Messrs. C. A. Snow & Co. for applicant.

This is a petition taken from the action of the examiner of trade-marks refusing to register the words "Common-Sense" as a trade-mark for weather strips.

The examiner's objection is that the words are descriptive; that they indicate "the character of the article as being well adapted to the particular use or purpose for which it is intended, and constructed according to common sense principles or good judgment".

The position of the examiner seems to me to be correct and his decision is therefore affirmed.

S. T. Fisher,

Acting Commissioner.

September 13, 1895.

66

Serial No. 49116 Paper No.

Commr's Decision

Dated Sept. 13, 1895.

John Yung Jr.

Recorded Vol. 57, page 479.

September 13, 1895. S.E.T.

U.S.Patent Office.

Ex parte Clarence K. Bowman.

Trade-Mark for Spiritous Liquors.

Petition.

Application for registration filed January 16, 1895, No. 48,273.

Mr. Frederic B. Keefer for applicant.

This is a petition taken from the action of the examiner of trade-marks refusing to register the words "Cedar Valley" as a trade-mark for spiritous liquors.

This term it seems to me clearly comes under the third class of geographical terms mentioned in ex parte Hendley, 72 O.G., 1654, and the decision of the examiner of trade-marks is therefore affirmed.

S. T. Fisher,

Acting Commissioner.

September 13, 1895.

Serial No. 48,273 Paper No.

Commr's Decision

Dated Sept. 13th 1895.

Clarence K. Bowman.

Recorded Vol. 57, page 478.

October 23, 1895. S. E. T.

U. S. Patent Office.

Ex parte Lucien N. Brunswig.

Petition.

Application for registration filed April 9,1895,No.48,916.

Messrs. Munn & Co. for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register the word "Argyle" as a trade-mark for bitters.

The examiner's refusal was based upon the holding that the word "Argyle" is a geographical term in common use. It seems to me that this position was correct and the decision of the examiner is affirmed.

S. T. Fisher

Acting Commissioner.

October 25,1895.

Recorded Vol. 58 P. 65.

October 4, 1895. S.E.T.

U.S.Patent Office.

Ex parte DeMoville & Co.

Trade-Mark for Perfumery, &c.

Petition.

Application for registration filed May 13, 1895, No. 49,146.

Mr. James L. Norris for applicant.

This is a petition from the examiner of trade-marks refusing to register the words "Crushed Roses" as a trade-mark for perfumery, &c.

The examiner's refusal was based upon the ground that the words in question are descriptive, or that if not descriptive, they are deceptive. The applicant contends that in view of Stoughton v. Woodward, 50 O.G., 1297, and American Fibre Chamois Co. v. De Lee & Dernberg, 71 O.G., 1458, registration ought to be granted.

In the first case cited, it was decided that the words "Cough Cherries" when used as applied to a confection were not descriptive of the qualities of the article, but were sufficiently arbitrary and fanciful to be appropriated as a trade-mark. In the latter case a similar decision was rendered as to the words "Fibre Chamois".

It seems to me that a natural inference that a purchaser

would draw from the mark "Crushed Roses" as applied to perfumes would be that the perfume in question was made by crushing the rose leaves and obtaining a perfume therefrom. If such were the fact, the mark ought not to be registered on the ground that it is descriptive; but the applicants say that this is not the fact, that they manufacture a variety of perfumes all under the general name of "Crushed Roses", such as violet or heliotrope perfumes, and that if a perchaser should enter a store and ask for crushed roses perfume, he would immediately be asked which variety of crushed roses perfume he wished. The applicant therefore contends that the mark is fanciful and arbitrary.

If perfumes had never been made from roses, I should hold applicant's position to be sound, but as rose leaves are one of the commonest sources from which perfumes are manufactured, it seems to me that the term "crushed roses" would be deceptive as applied to perfumes made from violet or heliotrope. I do not think that the cases cited are on all fours with the present case.

The decision of the examiner of trade-marks is therefore affirmed.

S. T. Fisher,

Acting Commissioner.

October 7, 1895.

68

Serial No. 49,146 Paper No. 9

Commr's Decision

Dated Oct. 7, 1895.

De Moville & Co.

To ... co...

Recorded Vol. 58, p. 14.

October 25, 1895. S.E.T.

U.S.Patent Office.

Ex parte The Success Remedy Company.

Trade-Mark for Medical Compounds.

Petition.

Application for registration filed June 18, 1895, No. 49,420.

Mr. Jas. J. Sheehy for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register the word "Success".

The examiner has refused registration on the ground that the word is a "descriptive and advertising term" and therefore public property.

It seems to me that the position taken by the examiner is correct and his decision is therefore affirmed.

S. T. Fisher,

Acting Commissioner.

October 29, 1895.

Serial No. 49,420 Paper No. 16

Commr's Decision

Filed Oct. 29 1895.

The Success Remedy Co.

Recorded Vol. 58, p. 73.

October 31, 1895. S.E.T.

U.S.Patent Office.

Ex parte Lord & Taylor.

Trade-Mark for Gloves.

Petition.

Application for registration filed April 24, 1895, No. 49,034.

Mr. Van Buren Hillyard for applicant.

This is an appeal taken from the action of the examiner of trade-marks refusing to register as a trade-mark for gloves the phrase "The 'Formosa' Doubly Woven Finger Tips."

The examiner holds that the phrase "Doubly Woven Finger Tips" is descriptive, especially as the structure is covered by a previous patent. He also holds that the addition of the word "Formosa" to the phrase quoted above cannot confer registrability upon a trade-mark because it is a geographical term. The applicant contends that "Formosa" has a meaning apart from its geographical meaning, such as beautiful. He also contends that the use of quotation marks and the article The emphasizes this distinction. It seems to me, however, that the use of quotation marks would not render a mark registrable that is otherwise objectionable. For instance, if the trade-mark in Columbia Mill Co. v. Alcorn et al.,

65 O.G., 1916, had been The Columbia Mill Co., with or without quotation marks, the court would have reached, in my opinion, the same conclusion.

The decision of the examiner is therefore affirmed.

S. T. Fisher,

Acting Commissioner.

November 4, 1895.

60

Serial No. 49,034 Paper No. 12

Commr's Decision

Dated Nov. 4, 1895.

Lord & Taylor

Recorded Vol. 58, p. 78.

U.S.Patent Office

Rec.Vol 58,p.151.

Ex parte Henry B.Smith

Trade Mark for Flour

Petition.

Application for registration filed May 20,1895,No.49,221.

Mr.Louis K.Gillson for applicant.

This is a petition taken from the action of the examiner of trade marks refusing to register the words "Better than Best" as a trade mark for flour. The examiner based his refusal on the ground that the phrase in question is descriptive. At first sight this objection seems to be a proper one,but when closely scrutinized it would seem that if this phrase were intended to convey the impression that applicant's flour is better than the best flour, it would be meaningless. I think therefore that the phrase in question,while perhaps it may be considered partially descriptive, still has a fanciful and arbitrary signification and the decision of the examiner is therefore reversed.

Dec.23,1895. S.T.Fisher Asst.Com.

S.T.Fisher

U.S. Patent Office

Ex parte Henry J. Smith

Trade mark for flour

Petition.

Application for registration filed Jan. 3, 1919, No. 49,341.

St. Louis & Allen for applicant.

[illegible] the petition was from the action of the examiner of trade marks refusing to register the words "Better than Best" as a trade mark for flour. The examiner based his refusal on the [illegible] that the phrase is descriptive. It [illegible] this objection seems to be a proper one, but when closely scrutinized it would seem that if this phrase were intended to convey the impression that applicant's flour is better than the best flour, it would be contradictory. I think therefore that the phrase in question, while [illegible] is not considered peculiarly descriptive, still was a fanciful and somewhat arbitrary application of the adjective is [illegible] reversed.

C.J. Fisher Asst. Com.

Oct.30,1895. U.S.Patent Office

Ex parte S.I.Davis & Co.

Rec. Vol. 58-p. 167

Trade Mark for Cigars.

Petition

Application for registration filed July 23 ,1895,No.49620

Mr.Stephen J.Cox for applicants.

This is an appeal taken from the action of the examiner of trade marks refusing to register a trade mark consisting of the words "Silver Club" and a group of four heads. These heads represent four congressmen noted for their advocacy of free silver. The examiner holds that the consent of each of these four congressmen must be obtained before the trade mark can be registered, citing various authorities.

It is true that in the application the essential features of the trade mark are said to be"a group of heads and the words Silver Club". The fac similes furnished,however, show the portraits of four congressmen and their names. It might be possible that some one of the four would object to the use of his portrait in such a connection, and unless the heads were portraits of distinguished advocates of free silver, the words "Silver Club" would lose their significance and it is questionable whether these words of themselves would constitute a valid trade mark.

Petition

Petition 1. Box for applicants.

It seems to me that the position taken by the examiner is correct and his decision is affirmed.

S.T.Fisher,

Acting Commissioner,
now Assistant Commissioner.

December 30,1895.

Nov.12,1895.

U.S.Patent Office.

Ex parte Gold Leaf Baking Powder Co.

Trade Mark for Baking Powder.

Petition.

Rec. Vol. 58-p. 179

Application filed July 29,1895,No.43643

S.T.Fisher
Acting Commissioner,

Messrs.L.Bagger & Co.for applicant.

This is a petition taken from the action of the examiner refusing to register the words "Gold Leaf" as applied to baking powder. The examiner refused registration on account of the trade mark registered to the Elliott Baking Powder Company,No.25,778,for the same class of goods,showing the words "Silver Leaf" and a picture of a leaf.

The examiner holds that the marks are so nearly alike that the ordinary purchaser would be deceived. The applicant contends that there is a sufficient distinction between the words "gold" and "silver" to prevent confusion. It is apparent that in sound the phrases "gold leaf" and "silver leaf" are clearly distinguishable. It is to be noted,however,that a fac simile of applicant's mark is presented showing the words "Gold Leaf" and the picture of a leaf. Upon being rejected upon trade mark No.25,778,applicant amended his case by cutting out the picture of the leaf,thereby practically admitting that the mark which he had actually used so

Nov.12,1931.

Ex parte Swinburne Tanning Process Co.

Serial Nos. 377,778 and 377,779.

Patentee.

Thomas J. Dreyer, Jr. for applicant.

This is a petition under Rule of Practice requesting the examiner-in-charge of trade-mark interferences to declare an interference between the above entitled applications.

The examiner-in-charge has refused the petition, holding that the words "Gold Leaf" and "Silver Leaf" are clearly distinguishable. It is contended, however, that the similarity of applicant's mark, consisting of the words "Gold Leaf" and the picture of a leaf, to the mark rejected upon trade-mark No. 259,778, applicant

nearly resembled the registered mark that the one might be mistaken for the other. It is to be presumed that if registration is granted, the applicant will still continue to use the label submitted. I think therefore that the examiner's position is correct and his decision is affirmed.

S.T.Fisher

Acting Commissioner,
Now Assistant Commissioner.

January 2,1896.

Jan.2,1896.

Rec. Vol. 58 p. 176

U.S.Patent Office

Ex parte North Dakota Milling Co.

Trade Mark for Breakfast Foods,etc.

Petition.

Application for registration filed May 20,1895,No.49,217.

Messrs.Munn & Co.for applicant.

This is a petition taken from the action of the examiner refusing to register the words "Cream of Wheat" as a trade mark for "breakfast foods,cracked wheat,wheat grits,wheat ferina,purified middling".

The examiner's refusal is based upon the reasons that he considers the phrase in question to be descriptive and that it should not be registered in view of trade marks No.~~12~~ 4181,to Engelke and Reiner,Nov.14,1876,No.9487,The Cereals Mfg.Co.,June 27,1882,and No.12954,Heywood & Williams,Jan.19,1886. The applicant urges that the words "Cream of Wheat" are not descriptive. I am inclined to consider that this phrase means either that the best part of the wheat is used or that the best wheat is selected for use. As to the trade marks cited by the examiner,it seems to me that the closest one is that to Heywood & Williams. This is a trade mark for wheat flour and it is stated that the essential feature of the

The decision of the examiner is affirmed.

Foster,
Assistant Commissioner.

mark is the phrase "Cream of the Wheat". The applicant admits that this would prevent registration if it were applied to breakfast foods, but contends that the fact that Heywood and Williams applied the phrase "Cream of the Wheat" to flour ought not to prevent its being applied by other applicants to different classes of merchandise. It is significant that in this application as originally presented it was stated that the trade mark was applied to flour among other things. The word "flour" was removed by amendment. It would seem to be conclusive from these facts that the applicant regarded flour and breakfast foods as belonging to the same class of merchandise. Even if it had not been stated in the original application that the trade mark was applied to flour, I should still be of the opinion that breakfast foods including cracked wheat, wheat grits, wheat farina, &c, are so nearly allied to flour that the previous registration to Heywood & Williams would prevent registration of the mark in question.

The decision of the examiner is affirmed.

S. T. Fosher,

Assistant Commissioner.

January 2, 1896.

The decision of the examiner is affirmed.

S. T. Yoakum,

Assistant Commissioner.

January 2, 1930.

October 16, 1895.

U. S. Patent Office. S. T. F.

Ex parte Della E. Miyamoto. Recorded Vol. 58 P. 42.

Trade-Mark for Disinfectants.

Petition.

Application for registration filed June 26, 1895, No. 49,472.

Mr. L. W. Serrell for applicant.

This is a petition that the fee in the above entitled case be returned and that applicant be allowed to prosecute a former application filed by her deceased husband.

It appears that there was a former application for registration which has not yet been granted. After the death of the applicant, his wife, who was in ignorance of such application, filed the present application. It seems to me that this was done by mistake, and in accordance with the views set forth in ex parte Finlayson, Bousfield & Co., 61 O.G.,152; C.D.,1892,201,it is directed that the fee be returned, and to this extent the petition is granted.

Upon making in the previous application a proper showing that applicant is the administratrix of the former applicant, she will be allowed to prosecute said application.

October 16,1895.

S. T. Fisher,
Acting Commissioner.

S. T. Fisher.

M.H.

U. S. Patent Office.

Recorded Vol. 57, P. 410.

Nicholas v. Tharp.

Trade-Mark for Whiskey.

Appeal from Examiner of Interferences.

Application for registration filed by Geo. S. Nicholas December 26, 1894. Trade-Mark registered to James Tharp, Jan. 7, 1890, No. 17,366.

Messrs. G. H. & W. T. Howard for Nicholas.
Messrs. L. Bagger & Co. for Tharp.

This is an appeal from the decision of the examiner of interferences adjudicating priority in favor of Nicholas. The subject-matter of the interference is a trade-mark consisting of the word "Berkeley" as applied to whiskey.

Tharp is a registrant and stands upon his record date, October 16, 1889, having taken no testimony. Even if he should be given the benefit of his date of adoption, September 1, 1886, it would have no effect upon the final decision.

From the testimony presented by Nicholas it appears that he was formerly a member of the firm of Purdy & Nicholas, a mercantile firm in New York engaged in the sale of wines and liquors; that among the goods placed by them on the market was a rye whiskey to which they attached the brand "Berkeley;" that this brand was adopted by them as early as June, 1879, and continuously used in their business as a trade-mark until the dissolution of the firm in September, 1888, and that Nicholas continued in his own name the

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business of the firm, and in such business has continuously used the trade-mark in issue to designate a certain whiskey sold by him. It further appears that Purdy, the former partner of Nicholas, who by the terms of dissolution was entitled to use any trade-mark or design belonging to the copartnership, has never exercised his right to use the word "Berkeley" in connection with whiskey and has since assigned such right to Nicholas. It thus appears that Nicholas is entitled to registration as against Tharp.

Accompanying the appeal is a motion to dissolve by Tharp on the grounds that Nicholas has been guilty of laches; that he has not been engaged in "foreign commerce or commerce with Indian tribes," and that the mark "Berkeley" is a geographical name, and as such is not registrable.

The first point has not in my opinion been established, and the second has been substantially denied by me in the fact of finding for Nicholas.

The third point, that the word "Berkeley" is a geographical name, seems to me to be well taken. I think therefore that registration should be refused to Nicholas for this reason.

The decision of the examiner of interferences adjudicating priority in favor of Nicholas is affirmed.

S. T. Fisher,

Assistant Commissioner,
now Acting Commissioner.

August 27,1895.

business of this firm, and in such business has continuously used
the trade-mark in issue to designate a certain whiskey sold by him.
It further appears that Pratt, the former partner of Nicholas, who
by the terms of dissolution was entitled to the said trade-mark or
certain belonging to the partnership, was never questioned his
right to use the word "Nickels" in connection with whiskey and has
since acquired such right to Nicholas. It thus appears that Nicho-
las is entitled to registration as against Pratt.

In comparing the appeal is a motion to dismiss by Pratt on
the grounds that Nicholas has been guilty of laches; that he has
by open engaged in "doing commerce or commerce with Indian
tribes," and that the mark "Nickels" is a copyrighted name, and
as such is not registrable.

The first point has not in my opinion been established, nor
the second nor most substantially denied by me in the Pratt case
ing for Nicholas.

The third point, that the word "Nickels" is a geographical
name, seems to me to be well taken. I think registration should be refused to Nicholas for this reason.

The decision of the examiner of interference in priority in favor of Nicholas is affirmed.

T. Dwight,

Acting Commissioner.

Jan. 15, 1896. S. E. T.

Recorded Vol. 58, P. 205

U. S. Patent Office.

Ex parte The Mellwood Distillery Company.

Trade-Mark for Distilled Liquors.

Petition.

Application for registration filed June 25,1895, No. 49,464.

Mr. Thos. S. Hopkins for applicant.

This is a petition taken from the action of the examiner refusing to register the word "Runnymede" as a trade-mark for whiskey. The examiner's refusal is based upon the ground that the word in question is a geographical term. Ex parte Hendley,72 O.G., 1654. It seems to me, however, that the word in question can hardly be considered a well known geographical name and that its romantic significance is far greater than its geographical significance. Ex parte Indiana Bicycle Company, 72 O.G., 1654.

The decision of the examiner is therefore reversed.

S.T.Fisher,

Assistant Commissioner

January 18,1896.

January 1, 1906.

Assistant Commissioner

G.T.Fisher,

In re Petition of [illegible]

In re Petition for [illegible]

[illegible]

[illegible]

In re Petition for registration filed [illegible], No. 1[illegible].

Mnos. S. Hopkins for applicant.

This is a petition under Rule 2[illegible] of the Commissioner [illegible]

[illegible] asks to register [illegible] as a trade-mark for [illegible]

[illegible]. The examiner's refusal is based upon the ground that the [illegible]

word in question is a [illegible]. In re Piper Heidsieck, 12 O.G., [illegible].

[illegible]. It seems to me, however, that the word is [illegible] [illegible]

[illegible]. It may be considered a well known geographical name and that its [illegible]

[illegible] the significance is far greater than its geographical signific[illegible].

In re Pasto Indians [illegible] Pasto Tobacco, 72 O.G., 1684.

The decision of the [illegible] is reversed.

G.T.Fisher,

Assistant Commissioner

Recorded Vol. 58, P. 207

M.H.

U. S. Patent Office.

Ex parte Achille Starace.

Trade-Mark for Oils.

Petition.

Application for registration filed April 15, 1895.

Mr. L. W. Serrell for applicant.

This is a petition from the action of the examiner of trade-marks in refusing registration of a device consisting of an eagle resting upon a globe with a branch and leaves at each side of the globe, and the word "Aquila," applied to food and relishes, and particularly to oils for table use. The elements of this trade-mark have generally been arranged as shown in the fac-simile forming part of the application, which represents rays of light radiating from the globe, and the word "Aquila" within an ornamental border below the globe, but the applicant states that these letters may be varied at pleasure without materially affecting the character of his trade-mark, the essential feature of which is the representation of an eagle upon a globe, with a branch and leaves at each side of the globe, and the word "Aquila."

Registration was refused by the examiner upon reference to the trade-mark of the American Cotton Oil Company, of New York, No. 23,776, registered October 31, 1893, which consists of the representation of an eagle with outstretched wings resting upon a globe

U. S. Patent Office.

Ex parte Aquila Stearns.

Trade-Mark for Oils.

Petition.

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pplication for registration filed April 15, 1909.

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r. L. W. Serrell for applicant.

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t each side of the globe, and the word "Aquila."

Registration was refused by the examiner upon reference to the
rade-mark of the American Cotton Oil Company, of New York, No.
3,776, registered October 31, 1893, which consists of the repre-
entation of an eagle with outstretched wings resting upon a globe

and grasping branches of the cotton plant. The fac-simile presented in the reference shows in addition to the eagle, globe, and cotton branch above described, an oval beaded border surrounding the same, and upon the face of the globe the name of the company. The trade-mark illustrated and described may be in one solid color or in a combination of colors upon a background of any colors; the cotton branches may be represented variously, as for example in the bud, in the boll, or full grown. Variations in the position of the eagle upon the globe may be made, without departing from the essential character of the trade-mark, the essential feature of which was alleged to be the representation of an eagle with outstretched wings, resting upon a globe, and grasping branches of the cotton plant.

Another reference is produced by the applicant himself, the trade-mark for olive oil of Cusimano Brothers, No. 15,459, registered May 15, 1888, consisting of an eagle in conjunction with the words "Olio D'Olivia Sopraffino Di Lucca." In the latter case these were generally arranged as shown in the fac-simile accompanying the certificate, the eagle being placed in the center with wings open and feet resting on a twig, with the word "Sopraffino" placed in near proximity to the head of the eagle. Just under the twig on which the feet of the eagle rest is a blank circle forming the lower part of the border encircling the eagle, and other de-

grasping branches of the cotton plant. The two-ninths pre-sent-

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nt.

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wig on which the feet of the eagle rest is a blank circle [illegible]

he lower part of the border encircling the eagle, and other de-

tails are given, but the essential feature is the representation of an eagle with wings open and with feet upon a twig.

The examiner considers the distinguishing feature of applicant's device and that of the principal reference to be the eagle resting upon the globe, and considers the branches of the cotton plant or the olive branch and the word "Aquila" as mere accessories. He held the rule to be that the imitation of a trade-mark need not be exact and perfect, but limited and partial, and refused registration on the ground that the mark of the applicant bears such striking similarity to the mark already registered to another as to cause confusion in the trade when used upon the same goods.

The petitioner contends that his trade-mark is sufficiently different from the references not to be mistaken, and while admitting the rule of the courts to be as stated by the examiner, he contends against the state of facts which the examiner considers to obtain in this case. In support of his view the petitioner submits the affidavits of a dealer, in one instance, of a broker in oils, and of a manufacturer of canisters, in the same or in a similar line of merchandise. But the rule of the courts is that infringing trade-marks need not be so similar as to deceive dealers, who are astute to note differences that would escape the eye and attention of the ordinary purchaser. Even were it shown that the dealers positively knew the goods of one of these parties from the

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other, it would not be sufficient, seeing that the goods are sold for the purpose of being resold in the market, and that the resemblance is such as to be likely to cause the one mark to be mistaken for the other by the ultimate purchaser. Edelsten v.Edelsten, 1 de G., J. & S., 185; Coats v. Holbrook, 2 Sandf. Ch., 586. In Seixo v. Provezende, L. R., 1 Ch., 192, Lord Cranworth,Chancellor,said:

> "All that courts of justice can do is to say that no trader can adopt a trade-mark so resembling that of a rival as that ordinary purchasers, purchasing with ordinary caution,are likely to be misled. It would be a mistake, however, to suppose that the resemblance must be such as would deceive persons who should see the two marks side by side. The rule so restricted would be of no practical use. If a purchaser, looking at the article offered to him, would naturally be led, from the mark impressed on it, to suppose it to be the production of the rival manufacturer, and would purchase it in that belief, the court considers the use of such a mark to be fraudulent."

It is not necessary that the whole should be pirated. Nor is it necessary to show that any one has in fact been deceived. Filley v. Fassett, 44 Mo., 173.

In Wotherspoon v. Currie,L.R., 5 H.L.,508,Lord Chelmsford holds the following language:

> "For the purpose of establishing a case of infringement, it is not necessary to show that there has been the use of a mark in all respects corresponding with that which another person has acquired an exclusive right to use, if the resemblance is such as not only to show an intention to deceive, but also such as to be likely to make unwary purchasers suppose that they are purchasing the article sold by the party to whom the right to use the trade-mark belongs."

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In McLean v. Fleming, 96 U.S., 245, 251, the court say:

"What degree of resemblance is necessary to constitute an infringement is incapable of exact definition, as applicableto all cases. All that courts of justice can do, in that regard, is to say that no trader can adopt a trade-mark, so resembling that of another trader, as that ordinary purchasers, buying with ordinary caution, are likely to be misled."

In Gorham Company v. White, 14 Wall., 511, identity of appearance in patented designs was under consideration, and the court passed over the testimony of experts and held that if in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs be substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.

It appears that the applicant is doing business in the same city as the parties in the reference.

The applicant argues upon the general configuration of the border, the size and appearance of the bird, the position of the wings, the leaves and details of the branch held by the bird, and particularly dwells upon the fact that the word "Aquila" is employed in connection with the present trade-mark, and claims that the use of that word of itself gives character to the whole device.

To this I cannot assent, and upon a careful review of the authorities I must hold that the mark will cause the petitioner's

In McLean v. Fleming, 96 U.S., 245, 251, the court say:

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It appears that the applicant is doing business in the same city as the parties in the reference.

The applicant argues upon the general configuration of the border, the size and appearance of the bird, the position of the wings, the leaves and details of the branch held by the bird, and particularly dwells upon the fact that the word "Alpaca" is employed in connection with the present trade-mark, and claims that the use of that word of itself gives character to the whole device.

To this I cannot assent, and upon a careful review of the authorities I must hold that the mark will cause the petitioner's

goods to bear the same name in the market as the goods of the owner of the registered mark which is cited as a reference; that while not exactly copied, it is a copy of a substantial portion of the registered mark, and of an essential portion, and that the public would be led to believe while buying the goods of the petitioner that they were buying the goods of the registrant.

Registration therefore must be refused, and the decision of the examiner of trade-marks is affirmed.

John S. Seymour,

Commissioner.

January 18, 1896.

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Registration therefore must be refused, and the decision of the examiner of trade-marks is affirmed.

John S. Seymour,

Commissioner.

January 16, 1896.

Recorded Vol. 58 P. 218

Jan. 16, 1896. S. E. T.

U. S. Patent Office.

Ex parte L. M. Rumsey Manfg. Co.

Trade-Mark for Water Closets.

Petition.

Application for registration filed December 14,1895,No.50,477.

Mr. John D. Hyer for applicant.

This is a petition taken from the action of the examiner refusing to register the word "Como" as a trade-mark. The examiner's refusal was based upon the ground that the word is geographical in character. It seems to me, however, that this objection is not a valid one in the present case and the examiner's decision is therefore overruled.

S. T. Fisher,

Assistant Commissioner.

January 20, 1896.

January 20, 1900.

Jan. 14, 1896. S. T. Jan

U. S. Patent Office.

Ex Parte Alfred A. Brooks. Recorded Vol 58, P. 217

Trade-Mark for Razor Strops.

Petition.

Application for registration filed April 17, 1895, No. 48,986.

Messrs. Macleod, Calver & Randall for applicant.

This is a petition from the action of the examiner refusing to register the word "Honestrop" as a trade-mark for razor strops.

The examiner refused registration on the ground that the word in question was descriptive. His position is that the words "hone" and "strop" used in their ordinary signification describe applicants device as fully as could be done by any two words. The word "honestrop" is not in the dictionary; notwithstanding this, however, it seems to me that the word is descriptive in that it implies that the article on which it is used possesses the properties of a hone and a strop. Moreover, in the patent to Ketchum and Wilde, No. 189,561, April 17, 1877, the word "honestrap" is used. This adds force to my conclusion that the word "honestrop" is descriptive in character and the decision of the examiner is therefore affirmed.

S. T. Fisher,

Assistant Commissioner.

January 20, 1896.

Jan. 14, 1895.

U. S. Patent Office.

In Parte Alfred A. Weeks.

Trade-Mark for Razor Strops.

Petition.

Application for registration filed April 17, 1893, No. 46,803.

Messrs. Macleod, Calver & Randall for applicant.

This is a petition from the action of the examiner refusing to register the word "nonestrop" as a trade-mark for razor strops.

The examiner refuses registration on the ground that the word in question was descriptive. His position is that the words "none" and "strop" used in their ordinary signification describe applicant's device as fully as could be done by any two words. The word "nonestrop" is not in the dictionary; nothing at present indicates this; however, it seems to me that the word is descriptive in that it implies that the article on which it is used possesses the properties of a none and a strop. Moreover, in the patent to Peterson and Wilde, No. 489,[illegible] dated April 17, 1893, the word "nonepastrop" is used. This adds force to my conclusion that the word "nonestrop" is descriptive in character and the decision of the examiner is therefore affirmed.

S. T. Fisher,

Assistant Commissioner.

January 30, 1895.

Jan. 3, 1896. S.T.T.

U. S. Patent Office.

Recorded Vol. 58, P. 298.

Ex parte George S. Nicholas.

Trade-Mark for Whiskey.

Petition.

Application for registration filed December 26, 1894, No. 46,165.

Messrs. T. H. & W. T. Howard for applicant.

This is a petition taken from the action of the examiner refusing to register the word "Berkeley" as a trade-mark for whiskey.

It seems to me that the word in question is a well known geographical term and one which cannot be registered in view of Columbia Mill Co. v. Alcorn et al., 65 O. G., 1916.

The decision of the examiner is affirmed.

S. T. Fisher,

Assistant Commissioner.

January 21, 1896.

Trade-Mark for Whiskey.

Petition.

The decision of the examiner is affirmed.

S. T. Piper,

Assistant Commissioner.

Jan. 14, 1896. Recorded Vol. 58, P. 229 S. E. T.

U. S. Patent Office.

Ex parte The Peters Cartridge Company.

Trade-Mark for Ammunition.

Petition.

Application for registration filed January 9,1895,No.44,415.

Mr. Frank T. Brown for applicant.

This is a petition taken from the action of the examiner refusing to register the word "Prize" as a trade-mark for ammunition.

The examiner's objection is that the word in question is descriptive in character. It is defined in the Century dictionary as "worthy of a prize; that has gained a prize". In view of the decisions cited by the examiner and especially the dictum in the case of the Amoskeag Mfg. Co. v. Spear, 2 Sand., S.C.,599, and in view of the New England Whalebone Mfg. Co., 51 MS. Dec., 71, and the cases therein cited, it seems to me that the position taken by the examiner was correct and his decision is therefore affirmed.

S.T.Fisher,

January 20, 1896. Assistant Commissioner.

Dec. 14, 1920. S. T. T.

Ex parte Geo. Frank Patterson Company.

Trade-Mark for Ammunition.

Petition.

Application for registration filed January 3,1919,No.11,111.

Mr. Frank T. Brown for applicant.

This is a petition taken from the action of the examiner refusing to register the word "Triad" as a trade-mark for ammunition.

The examiner's objection is that the word in question is descriptive in character. It is defined in the Century Dictionary as "worth of trifles; that which makes a price". In view of the disclaimer filed by the applicant and especially the letter in the case of the Interwoven Sock Co. vs. Speed & Cook, 2 C.C.P.A., and in view of the two registered trademarks U. S., No., 71, and No. 72, and the cases therein cited, it seems to me that the decision taken by the examiner can not be sustained and the petition is therefore allowed.

S.T.Fisher,

Examiner of Interferences.

Recorded Vol. 58, P. 281.

M. K.

U. S. Patent Office.

Ex parte Henry A. Sipher and Charles K. Friedman.

Trade-Mark for Coffee Substitute.

Petition.

Application for registration filed June 4, 1895.

Messrs. C. A. Snow & Co. for applicants.

This is a petition taken from the decision of the examiner of trade-marks, in which he refused to register the words "Superior Coffee Helper" as a trade-mark for a coffee substitute.

A name or a collocation of words which are merely descriptive cannot be registered, because other dealers in coffees or substitutes for coffee have a right to use all the ordinary words of the English language to describe their goods and their qualities. Though names or words are not complete definitions, they are objectionable if, so far as they go, they are apt for describing the goods upon which they are placed. In this instance, "superior" clearly refers to the quality, and "coffee helper" also seems to

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By Petze Henry A. Apiher and Charles K. Friedman.

Trade-Mark for Coffee Substitute.

Petition.

Application for registration filed June 4, 1895.

Messrs. G. A. Snow & Co. for applicants.

This is a petition asking for the registration of a trade-mark, in which it is stated to consist of the words "Coffee Dainty" as a trade-mark for a coffee substitute.

A mere or a collocation of words which are merely descriptive cannot be registered, because other parties in selling or dealing in coffee substitutes have a right to use all the ordinary words of the English language to describe the same and their qualities. Though rather or words which, when applied to [illegible] describe it, so far as they do, they can not be exclusive [illegible] goods upon which they are placed. In this instance, "Dainty" clearly refers to the quality, and "coffee" [illegible]

mean that the substance contained in the package either adds flavor to coffee or is itself a substitute for coffee.

In the specification accompanying this petition the applicants say:

"The class of merchandise to which the trade-mark is appropriated is foods and relishes, and the particular description of goods comprised in such class on which it is used by us is a preparation for use with, or as a substitute for, coffee."

In the fac simile filed with the application occur the words "Townsend's Superior Coffee Helper. --- It is all its name implies." The words appear to have the meaning which I have suggested and to be intended to have such meaning and to be descriptive. If so, their use upon coffee or its substitutes is open to the world and cannot be restricted by the adoption of these words as a trade-mark. They appear to fall within the prohibition of the statute which requires the applicant for registration to set forth under oath not only that such party has at the time a right to the use of the trade-mark sought to be registered, but that no other person, firm, or corporation has the right to ~~use~~ such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive.

The decision of the examiner of trade-marks is affirmed.

John S. Seymour,

Commissioner.

January 21, 1896.

In the specifications [illegible] the petition the applicants

say:

"The class of merchandise to which the trade-mark is appropriated is books and tablets, and the particular description of goods comprised in each class on which it is used by it is stationery for use with, or as a substitute for, coffee."

In the fac-simile filed with the application over the words "Townsend's Monarch Coffee" [illegible] it is all its name implies; The word [illegible] to have the meaning [illegible] I have suggested and is intended to have such meaning and to be descriptive. If so, their use upon coffee or its substitutes is open to the world and cannot be restricted to [illegible] mark. [illegible] to [illegible] of the [illegible] but not only [illegible] time a right to the use of the [illegible] but that no other person, firm, or corporation [illegible] such use, either in the identical form or [illegible] thereto as might be calculated [illegible]

The [illegible]

John S. Seymour,

January 17, 1893.

Recorded Vol 58, P. 238.

Jan. 3, 1896. S. E. T.

U. S. Patent Office.

Ex parte Richard Kny.

Trade-Mark for Enamelled Metal Goods.

Petition.

Application for registration filed October 7, 1895, No. 50,011.

Mr. Theodor Aub for applicant.

This is a petition taken from the action of the examiner refusing to register the word "Steel-Porcelain" as a trade-mark for enamelled metal wares.

The examiner holds that the word in question is descriptive in character in that it implies that the vessels are made of steel and covered with porcelain. The applicant's position is that the word "porcelain" cannot properly be employed to designate the finish on enamelled ware, but with this contention I am unable to agree. He also contends that the word in question suggests that the porcelain may have a particularly fine finish so as to resem-

This is a petition taken from the action of the examiner
to register the word "Ideal-Porcelain" as a trade-mark
[illegible].

The [illegible] is that the
word "porcelain" [illegible] an [illegible] ware, but with this contention I am unable to
agree. In this [illegible] in question suggests that
porcelain [illegible]

ble steel in some remote degree, and that the word is therefore used in a fanciful and arbitrary sense. This argument might be considered perhaps of some weight were it not for the fact that the trade-mark is not to be used upon porcelain articles but upon articles of steel covered with enamel. This fact, which is undenied, seems to me to clearly show that the word in question is descriptive.

The decision of the examiner is affirmed.

S. T. Fisher,

Assistant Commissioner.

January 21, 1896.

The decision of the examiner is affirmed.

S. T. Fisher,

Examiner.

January 27, 1899.

Jan. 30, 1896. Recorded Vol. 58, P. 268.

S. E. T.

U. S. Patent Office.

Ex parte Foot, Schulz and Co.

Trade-Mark for Foot Wear.

Petition.

Application for registration filed May 4, 1895, No. 49,084.

Mr. T. D. Merwin for applicants.

This is a petition taken from the action of the examiner of trade-marks refusing to register a mark, the essential feature of which was stated in the original application by the applicants to be the representation of a hand. Registration was refused by the examiner in view of the mark registered by Helmung, Wolf & Co., No. 7,346, May 28, 1878. Applicants' mark shows the representation of a right hand held in a horizontal position. The reference shows the figure of a left hand held in a vertical position with the word "made" on the palm thereof; there are other minor differences between the two marks.

The examiner holds that the resemblances are so marked that they would deceive the ordinary purchaser. In this holding I concur and the decision of the examiner of trade-marks is affirmed.

S. T. Fisher,

Assistant Commissioner.

January 11, 1896.

Decided Vol. 78 O. G. 658.

U. S. Patent Office.

Trade-Mark for Boot Wear.

This is a petition taken from the action of the examiner of trade-marks refusing to register a mark, the essential feature of which was stated in the original application by the applicants to be the representation of a hand. Registration was refused by the examiner in view of the mark [illegible]

of a right hand held in a horizontal position. The reference shows the figure of a left hand held in a vertical position with the word "made" on the palm thereof; there are other minor differences between the two marks.

The examiner holds that the resemblances are so marked that [illegible]. In this holding I concur and the decision of the examiner of trade-marks is affirmed.

Feb. 7, 1896. Recorded Vol. 58 P. 304 S. E. P.

U. S. Patent Office.

Ex parte John Pew and Son.

Trade-Mark for Fish.

Petition.

Application for registration filed March 1, 1893, No. 43,852.

Mr. Henry A. Seymour for applicants.

This is a petition taken from the action of the examiner refusing to register the words "Royal - Salted - Codfish" as a trade-mark for salted codfish.

The examiner's action was based upon the previously registered trade-mark for Rosenstein Bros., No.14,917, November 6,1867. It seems to me that the essential part of the present mark is the word "Royal",because the other words, "salted" and "codfish", are clearly descriptive. Moreover, I do not think that the use of the hyphens between the words of the proposed trade-mark is a sufficient difference to warrant the registration of the present mark over the registered mark, the essential feature of which is stated by the registrants to be the word "Royal".

It is contended that if the examiner holds that the present mark is an infringement of the mark registered by Rosenstein Bros., an interference should be declared. I see no objection to this if applicants desire it.

The decision of the examiner of trade-marks is affirmed.

U. T. Fisher,
Acting Commissioner,
now Assistant Commissioner.

February 14, 1896.

February 14, 1896.

Now Assistant Commissioner.

registrants to ~~him~~ word "Royal".

^

It is stipulated that if the examiner finds that the present case is an infringement of the mark registered by Weinstein Bros., an injunction should be granted. I see no objection to this if applicants desire it.

The decision of the examiner of trade-marks is affirmed.

C. H. Duell,

Acting Commissioner.

Ex parte John Pew and Son.

Trade-Mark for Pish.

Petition.

Application for registration filed March 1, 1895, No. 44,488.

Mr. Henry A. Seymour for applicants.

This is a petition from the action of the examiner refusing to register as word mark - Salted - Pollish - as a trade-mark for salted codfish.

The examiner's action was based upon the previously registered trade-mark for Scottish Dews, No. 14,417, November 5, 1895. It seems to me that the essential part of the present mark is the word "Royal", because the other words, "salted" and "codfish", are clearly descriptive. However, I do not think that the use of the ~~ph~~ phrase secures the right to the registered trade-mark is sufficient difference to warrant the registration of the present mark over the registered mark, the essential feature of which is stated by the

Feb. 13, 1896. Recorded Vol. 58. P. 306. S. E. T.

U. S. Patent Office.

Ex parte Kampfe Bros.

Trade-Mark for Safety Razors.

Petition.

Application for registration filed July 15, 1895, No. 49,568.

Mr. Oscar F. Gunz for applicants.

This is a petition taken from the refusal of the examiner to register "the representation of a star" as a trade-mark for safety razors. Registration was refused in view of the trade-mark registered to Theile & Quack, No. 4,190, December 5, 1876, for Cutlery, and the trade-mark registered to J. Dunn, No. 13,437, June 22, 1866, for All Descriptions of Edge Tools.

It seems to me that the first is the one which is most nearly calculated to deceive. The applicants urge that in 1876 no safety razors were on the market and that therefore Theile & Quack could not have used their mark upon safety razors. They also urge that nobody who wished to buy a safety razor would be likely to be deceived by a merchant offering him an ordinary razor. They say further that they have endeavored in vain to find a razor or any article of cutlery made by Theile & Quack upon the market.

I am of the opinion, however, that safety razors are fairly included under the term "Cutlery", nor is there any adequate proof to show that safety razors were not manufactured and sold prior to

b. 15, 1896.

U. S. Patent Office.

Ex parte Kampfe Bros.

Trade-Mark for Safety Razors.

Petition.

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plication for registration filed July 15, 1895, No. 49,556.

. Oscar P. Gunz for applicants.

This is a petition taken from the refusal of the examiner to
gister "the representation of a star" as a trade-mark for safety
zors. Registration was refused in view of the trade-mark regis-
red to Theile & Quack, No. 4,180, December 5, 1876, for cutlery,
d the trade-mark registered to J. Dunn, No. 15,432, June 22, 1886,
r All Descriptions of Edge Tools.

It seems to me that the first is the one which is most nearly
lculated to deceive. The applicants urge that in 1876 no safety
zors were on the market and that therefore Theile & Quack could
t have used their mark upon safety razors. They also urge that
body who wished to buy a safety razor would be likely to be de-
ived by a merchant offering him an ordinary razor. They say
rther that they have endeavored in vain to find a razor or any
ticle of cutlery made by Theile & Quack upon the market.

I am of the opinion, however, that safety razors are fairly
cluded under the term "Cutlery", nor is there any adequate proof
show that safety razors were not manufactured and sold prior to

1880 (applicants' date of adoption), nor has it been shown that Theile & Quack did not or do not manufacture and sell safety razors, nor that they have abandoned their mark.

The decision of the examiner of trade-marks is affirmed.

S. T. Fisher,

Assistant Commissioner.

February 14, 1896.

.880 (applicants' date of adoption), nor has it been shown that
'heile & Quack did not or do not manufacture and sell safety razors,
or that they have abandoned their mark.

The decision of the examiner of trade-marks is affirmed.

E. T. Fisher,
Assistant Commissioner.

February 14, 1896.

Feb. 14, 1896. Recorded Vol. 58. P. 309 S. T. F.

U. S. Patent Office.

Ex parte Strauss, Sachs and Company.

Trade-Mark for Mouth Harmonicas.

Petition.

Application for registration filed December 5, 1895, No.50,389.

Messrs. Roeder & Briesen and Mr. T. A. Lehmann for applicants.

This is a petition taken from the examiner's refusal to register the words "Emmet's Faultless" as a trade-mark for mouth harmonicas. The examiner's refusal is based upon the previously registered mark to W. Tonk & Bro., No. 10,741, August 21, 1883. In the registered mark the essential features are said to be the words "Emmet Professional". The examiner takes the position that the only registrable matter in either the applicants' mark or the registered mark is the word "Emmet", since the word "Faultless" is descriptive. The applicants hold that even granting that the word "Emmet" is old and the word "Faultless" descriptive, they both together form a new combination in words and a valid trade-mark.

I am unable to agree with the position taken by applicants and the decision of the examiner of trade-marks is affirmed.

S. T. Fisher,

Assistant Commissioner.

February 17, 1896.

U. S. Patent Office.

In Patent Matter, Serial No. [illegible].

Petition.

Feb. 1[illegible], 1896. S. E. T.

U. S. Patent Office

Ex parte George S. Nicholas.

Trade-Mark for Whiskey. Recorded Vol.56.p.315.

Rehearing.

Application for registration filed December 26, 1894, No.48,153.

Messrs. [illegible] & W. T. Howard for applicant.

This is a rehearing of applicant's appeal from the decision of the primary examiner refusing to register the word "Berkeley" as a trade-mark for whiskey. Registration was refused on the ground that the word in question was a geographical name. Upon the rehearing affidavits were introduced showing that the mark in question was used in New York and had no connection with any place bearing the name of Berkeley. It was also stated that the word was adopted for the reason that it was a noted family name.

This case has been in interference with the registered mark of Thary, in which the present applicant was victorious.

I am still somewhat in doubt as to the propriety of registering the word in question as a trade-mark, but in view of the facts brought out in the affidavits and also in view of the fact that registration has been once granted to another party, the former decision is reversed and the examiner of trade-marks is directed to register said mark unless there is further reason not disclosed by the record for refusing it.

S. T. Fisher,
Assistant Commissioner.

February 19, 1896.

This is a rehearing of applicant's appeal from the decision

that the mark is registrable. Registration was refused on the ground

during affidavits were introduced showing that the mark in ques-

This case has been in interference with the registered mark

to Tharp, in which the present applicant was victorious.

I am still somewhat in doubt as to the propriety of registering the word in question as a trade-mark, but in view of the facts brought out in the affidavits and also in view of the fact that registration has been once granted to another party, the former

E. C. Fisher,

Assistant Commissioner.

Feb. 27, 1896. S. E. T.

U. S. Patent Office

Ex parte The American Wringer Company.

Trade-Mark for Clothes Wringers.

Recorded Vol.58,p.349.

Petition.

Application for registration filed May 31, 1895, No. 49,286.

Mr. Alex. Mahon for applicant.

This is an appeal taken from the decision of the examiner of trade-marks refusing to register the word "Superior" as a trade-mark for clothes wringers. The examiner refused registration on the ground that the word in question is descriptive. It seems to me that the examiner's position is correct and this word, moreover, has already been refused as a trade-mark. Ex parte Rogers Fence Co., 47 MS. Dec., 399.

The decision of the examiner is affirmed.

S. T. Fisher,

Assistant Commissioner.

February 28, 1896.

U. S. Patent Office

Ex parte The American Wringer Company.

Trade-Mark for Clothes Wringers.

Recorded Vol. 68, p. 349.

Petition.

Application for registration filed May 31, 1895, No. 49,286.

Mr. Alex. Mahon for applicant.

This is an appeal taken from the decision of the examiner of trade-marks refusing to register the word "Superior" as a trade-mark for clothes wringers. The examiner refused registration on the ground that the word in question is descriptive. It seems to me that the examiner's position is correct and this word, moreover, has already been refused as a trade-mark. Ex parte Rogers Bence Co., 47 MS. Dec., 389.

The decision of the examiner is affirmed.

S. T. Fisher,

Assistant Commissioner.

February 28, 1896.

Feb. 27, 1896. S. T. F.

U. S. Patent Office.

Ex parte The American Wringer Company.

Trade-Mark for Wringers.

Petition. Recorded Vol.58, p.348.

Application for registration filed November 10, 1894, No. 47,792.

Mr. Alex. Mahon for applicant.

This is an appeal taken from the decision of the examiner of trade-marks refusing to register the word "Sterling" as a trade-mark for wringers. The examiner refused registration on the ground that the word in question is descriptive. It seems to me that the examiner's position is correct and this word, moreover, has already been refused as a trade-mark. Ex parte Candee and Company, decided July 26, 1879.

The decision of the examiner is affirmed.

S. T. Fisher,

Assistant Commissioner.

February 26, 1896.

Mar. 3, 1896. S. E. T.

U. S. Patent Office.

Recorded Vol.58, p.368.

Ex parte Frank P. Harned.

Trade-Mark for Astringent Tubes, Cylinders or Sticks for Barbers and Shavers Uses.

Petition.

Application for registration filed June 25, 1895, No. 49,462.

Mr. J. W. Douglass for applicant.

This is a petition taken from the action of the examiner of trade-marks refusing to register as a trade-mark for stiptics a mark "the essential feature of which is the side bordered label, bearing the word symbol Astringent Pencil and surrounding a cylindriform non-pointed package or article."

This case has already been before me and the words "Astringent Pencil" by themselves refused.

The examiner holds that - "Inasmuch as nearly all labels have borders on their sides, neither the inclusion of the border nor that of the printer's ornament in the essential feature is sufficiently important to add any distinctive trade-mark character thereto. See ex parte Brunswig, 57 MS.Dec., 342."

It seems to me that the examiner's position on the mark as covered by the present statement is correct. If it should be recited that the label is green with gilt borders and with the words "Universal Astringent Pencil", I think registration should be allowed.

March 3,1896.

S. T. Fisher,
Assistant Commissioner.

Mar. 3, 1896. S. E. T.

U. S. Patent Office.

Recorded Vol. 86, p. 366.

Ex parte Frank P. Turned.

Trade-Mark for Astringent Tubes, Cylinders or Sticks for Barbers and Shavers Uses.

Petition.

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pplication for registration filed June 25, 1895, No. 49,472.

r. J. W. Douglass for applicant.

This is a petition taken from the action of the examiner of

rade-marks refusing to register as a trade-mark for stipling a

rk "the essential feature of which is the side bordered label,

aring the word symbol Astringent Pencil and surrounding a cyl-

riform non-pointed package or article."

This case has already been before me and the words "Astringent

il" by themselves refused.

The examiner holds that - "Inasmuch as nearly all labels have

rders on their sides, neither the inclusion of the border nor

ct of the printer's ornament in the essential feature is suffi-

ently important to add any distinctive trade-mark character there-

. See ex parte Brunswig, 57 MS.Dec., 644."

It seems to me that the examiner's position on the mark as

vered by the present statement is correct. If it should be re-

ter that the label is green with gilt borders and with the words

Universal Astringent Pencil", I think registration should be

llowed.

S. T. Fisher,

Dec. 24, 1895. S. E. T.

U. S. Patent Office.

Ex parte Lucien N. Brunswig.

Trade-Mark for Bitters. Recorded Vol.58, p.165.

Rehearing.

Application for registration filed April 9, 1895, No.48,916.

Messrs. Munn & Co. for applicant.

This is a petition for a rehearing on the ground that the former decision dated October 25, 1895, did not cover every point raised by the former petition. The point of law raised is a peculiar one and the examiner and the applicant unite in the request that the case be sent back to the examiner for reconsideration. This request is granted and the examiner will proceed to reconsider the case as if no petition had been taken.

S. T. Fisher,

Assistant Commissioner.

December 27, 1895.

"Angle"

Dec. 24, 1895. C. D. W.

U. S. Patent Office.

Ex parte Lucien N. Brunswig.

Trade-Mark for Bitters. Records Vol. 6, p. 169.

Petitioner.

Application for registration filed April 9, 1895. No. 20,416.

Masars. Munn & Co. for applicant.

This is a petition for a rehearing on the grounds that the former decision dated October 7th, 1895, did not cover every point raised by the former petition. The point of law presented is a practice one and the examiner and the petitioner disagree. Shall the case be sent back to the examiner for [illegible]

This request is granted and the case will [illegible]

The case as it now stands [illegible]

C. D. Parker,

Assistant Commissioner.

September 27, 1895.

M.S.M.

March 13, 1896. S.E.T.

U. S. Patent Office.

Ex parte Camden Knitting Company.

Trade-Mark for Knit Underwear.

Petition. Recorded Vol. 58,p.416

Application for registration filed January 18,1896,No.50,657.

Messrs. Smith & Denison and Mr. F. A. Lehmann for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register the word "Florence" as a trade-mark for knitted goods. The examiner refused registration on the ground that the word in question is a geographical term and therefore it could not be registered in view of Columbia Mill Co. v. Alcorn,et al., 65 O.G., 1916.

It seems to me that the position taken by the examiner is correct and his decision is therefore affirmed.

S. T. Fisher,

Assistant Commissioner.

March 13, 1896.

M.S.M.

March 13, 1896.

S.S.T.

U. S. Patent Office.

Ex parte Camden Knitting Company.

Trade-Mark for Knit Underwear.

Petition.

Recorded Vol. 68,p.416

Application for registration filed January 10,1896,No.50,627.

Messrs. Smith & Denison and Mr. F. A. Lehmann for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register the word "Florence" as a trade-mark for knitted goods. The examiner refused registration on the ground that the word in question is a geographical term and therefore it could not be registered in view of Columbia Mill Co. v. Alcorn,et al., 65 O.G., 1916.

It seems to me that the position taken by the examiner is correct and his decision is therefore affirmed.

C. E. [illegible],

Assistant Commissioner.

March 13, 1896.

March 26, 1896. S. E.T.

U. S. Patent Office.

Recorded Vol.56, p.466.

Ex parte Frank Canz.

Trade-Mark for Flavoring Extracts.

Petition.

Application for registration filed December 26, 1895, No.50,505.

Messrs. Higdon & Higdon & Longan for applicant.

This is a petition taken from the action of the examiner of trade-marks refusing to register the words "Don't Cook Out" as a trade-mark for flavoring extracts. The examiner's position is that the words in question are descriptive. These words convey the idea to my mind that the flavoring extract to be used is of such a character that it may be added to articles of food before cooking and that after cooking the extract will still be present in the food; in other words, that the cooking operation will not destroy the flavoring extract or expel it from the food.

It seems to me that the examiner's position was correct and his decision is affirmed.

S. T. Fisher,

Acting Commissioner.

March 27, 1896.

M.S.M.

March 26, 1896.

S. T.M.

U. S. Patent Office.

Recorded Vol. 55, p. 466.

Ex parte Frank Cann.

Trade-Mark for Flavoring Extracts.

Petition.

Application for registration filed December 26, 1895, No. 30,905.

Messrs. Higdon & Higdon & Lonyan for applicant.

This is a petition taken from the action of the examiner of trade-marks refusing to register the words "Don't Cook Out" as a trade-mark for flavoring extracts. The examiner's position is that the words in question are descriptive. These words convey the idea to my mind that the flavoring extract to be used is of such a character that it may be added to articles of food before cooking and that after cooking the extract will still be present in the food; in other words, that the cooking operation will not destroy the flavoring extract or expel it from the food.

It seems to me that the examiner's position was correct and his decision is affirmed.

C. T. Fisher,

Acting Commissioner.

March 27, 1896.

C.S.M.

M.H.

U. S. Patent Office.

Ex parte Bromo-Celery Company.

Trade-Mark for Medical Compounds.

Petition.

Recorded Vol.59, p.73.

Application filed November 15, 1894.

Mr. Arthur L. Bryant for applicant.

This is a petition from the decision of the examiner of trade-marks, refusing to register the compound word "Bromo-Celery" as a trade-mark for a medical compound or preparation, for the relief of headache, neuralgia, &c.

The examiner's objection to the word is its descriptive nature as applied to applicant's preparation, indicating that the preparation contains bromin and celery, or if the preparation does not contain these ingredients, the word is used deceptively.

The applicant contends , however, that the word "Bromo" is not such a descriptive term as to make the compound word non-registrable under the law, and cites the case of Keasbey et al. v. The Brooklyn Chemical Works, decided by the Court of Appeals in New York, 37 N. E. Rep.,476, where the word "Bromo-Caffeine" was held to be a valid trade-mark, and N.K.Fairbank & Co. v. The Central Lard Co., 64 Fed. Rep., 133, to support his contention.

Both of these decisions have been given careful consideration and while the court from the facts before it came to the conclusion

U. S. Patent Office.

Ex parte Bromo-Seltzer Company.

Trade-Mark for Medical Compounds.

Petition.

Application filed November 13, 1916.

Mr. Arthur L. Bryant for applicant.

This is a petition from the decision of the examiner of trade-marks, refusing to register the combined word "Bromo-Seltzer" as a trade-mark for a medical compound or preparation, for the relief of headache, neuralgia, &c.

The examiner's objection to the word is its descriptive nature as applied to applicant's preparation, indicating that the preparation contains bromin or celery, or if the preparation does not contain it is intended, the word is used deceptively.

The applicant contends, however, that the word "bromo" is not such a descriptive term as to make the compound word non-registrable under the law, and cites the case of Lembky et al. v. The Brooklyn Chemical Works, decided by the Court of Appeals in New York, 14 N. Y. Sup., 194, where the word "bromo-seltzine" was held to be a valid trade-mark, and I.V.Thirlburn & Co. v. The Central Card Co., 64 Fed. Rep., 182, to support his contention.

Both of these decisions have been given careful consideration and while the cases from the facts before it came to the conclusion

Decided Feb. [illegible], 1917.

p. 73.

that the plaintiffs were entitled to the sole use of the word "Bromo Caffeine" as a trade-mark, yet with the facts before me in the present case, I am of the opinion that the word "Bromo-Celery" is descriptive, "Bromo" indicating the presence of bromin or a bromid in applicant's preparation.

Bromid, as is well known, is a compound formed by the union of bromin with another element or with an organic radical. Chemists in making the compound in which either bromin or a bromid is a constituent part customarily, in naming such a compound, contract the word bromin or bromid to bromo, and the latter word has grown into general use to indicate such element in such a compound substance; for example, the substance obtained by the action of bromin on alcohol in the presence of alkalies is known as tri-bromo-methone or bromoform, and tri-bromo-phenol is a compound produced by the action of bromin upon phenol. National Dispensatory, page 352. As examples of compound substances in which a bromid is used, see bromo-chloralum, a solution of chlorid and bromid of aluminium. The sensitive photographic emulsion known as bromo-gelatin is prepared from certain bromids, together with nitrate of silver and gelatin. When photographic plates in the wet process are impregnated with bromids and iodids they are said to be bromo-iodized.

that the plaintiffs were entitled to the sole use of the word "Bromo
-Seltzer" as a trade-mark, yet with the Court before me in the pres
ent case, I am of the opinion that the word "Bromo-Quinine" is de-
scriptive, "Bromo" indicating the presence of bromin or a bromid in
the applicant's preparation.

Bromid, as is well known, is a compound formed by the union of
bromin with another element or with an organic radical. Writers in
making the compound in order either to specify or to describe in a concise
and exact manner, in naming any such compound, must use the word
bromin or bromid to denote, as the latter very often does, a certain
exact use to indicate such element in such a compound substance; for
example, the substance obtained by the action of bromin upon phenol
or the presence of which is known as tri-bromo-phenic acid or tribro-
mol, as tri-bromo-phenol is a compound produced by the action of
bromin upon phenol. Writers use the word, bromid, in describing
compound substances in which a bromid is used, see bromo-chloralum,
a solution of chlorid and bromid of aluminum. The sensitive pho-
graphic emulsion known as bromo-gelatin is composed of certain
bromids, together with nitrate of silver and gelatin. These photo-
graphic plates in the wet process are treated with bromids and
after they are said to be bromo-iodized.

It would seem therefore that "Bromo-Celery" is a name for a substance the ingredients of which are bromin or a bromid and celery in some form, and that it is used descriptively. If, however, it be used on a preparation in which a bromid or bromin and celery are not the constituent parts, the word would be used deceptively, and could not be registered.

The examiner's action in refusing registration is affirmed.

John S. Seymour,

Commissioner.

May 2, 1896.

M.S.M.

It would seem therefore that "bromo-celery" is a name for a substance the ingredients of which are bromin or a bromid and celery in some form, and that it is used descriptively. It, however, it be used on a preparation in which a bromid or bromin and celery are not the constituent parts, the word would be used deceptively, and could not be registered.

The examiner's action in refusing registry is affirmed.

W. S. M.

Jan. 17, 1896. S. E. G.

U. S. Patent Office.

Ex parte Edwin W. Grove.

Trade-Mark for Remedies for Coughs, Colds, &c.

Rehearing.

Application for registration filed December 21, 1893.

Messrs. Higdon & Higdon & Longan for applicant.

This is a petition for rehearing, the applicant's original petition that the word "Bromo-Quinine" be registered as a trade-mark for cold, cough and headache remedies having been denied May 25, 1894. This decision was in part based upon a decision of the New York Supreme Court in the case of Keasbey et al. v. Brooklyn Chemical Works, Trade-Mark Record, April 19, 1893. In this case, however, an appeal has been taken to the New York Court of Appeals (37 N. E. Rep., 476), and the former decision was reversed; thereupon the applicant petitioned for rehearing. A similar case was decided by the Commissioner in person on May 2, 1895, ex parte Bromo-Celery Co. In that decision it was held that the word "Bromo-Celery" was descriptive. The language of that decision applies exactly to the present case. Moreover, in the case relied upon by applicant, the question of fraud undoubtedly influenced the court; thus, it was said in the third paragraph from the close of the decision:

"The defendants should be enjoined from the further use of

Recorded Vol. 59, page 75.

S. T. Fisher,
now Acting Commissioner.

U. S. Patent Office.

Ex parte Louis T. Crowe.

Trade-Mark for Tweeds for Trouser, Coats, &c.

Refused.

Application for registration filed December 23, 1899.

Messrs. Higdon & Higdon & Longan for applicant.

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a name which the plaintiffs had legally appropriated as a trade-mark many years prior to the time when the defendants commenced its use. We can see no reason for an appropriation of this name by the defendants other than that arising from an effort to convert to their own use and benefit the labor and skill of another. As this name adopted by plaintiffs does not describe the ingredients entering into ~~xxxxxxxxxx~~ defendants' preparation, an injunction restraining the latter from the use of the name adopted by the plaintiffs can inflict no injustice upon defendants. And they should not be permitted to acquire any advantage to themselves by the unlicensed use of the plaintiffs' trade-mark. It could only be used by the defendants for a fraudulent and illegal purpose, and the plaintiffs should be protected from such an improper use."

The former decision is adhered to.

S. T. Fisher,
Assistant Commissioner,
now Acting Commissioner.

May 4, 1896.

a name which the plaintiffs had legally appropriated as a trade-
mark many years prior to the time when the defendants commenced
its use. We can see no reason for an appropriation of this name
by the defendants other than that arising from an effort to convert
to their own use and benefit the labor and skill of another. 'a
this name adopted by plaintiffs does not describe the ingredients
entering into xxxxxxxxxx defendants' preparation, an injunction
restraining the latter from the use of the name adopted by the
plaintiffs can inflict no injustice upon defendants. And they
should not be permitted to acquire any advantage to themselves by
the unlicensed use of the plaintiffs' trade-mark. It could only be
used by the defendants for a fraudulent and illegal purpose, and
the plaintiffs should be protected from such an improper use."

The former decision is adhered to.

G. T. Fisher,
Assistant Commissioner,
now Acting Commissioner.

May 4, 1896.

April 23, 1896

S. E. T.

U.S. Patent Office.

Ex parte Daniel F. Packer.

Recorded Vol.59, page 29.

Trade-Mark for Luxative.

Petition .

Application for registration filed December 24, 1895, No.50,522.

Messrs. Church & Church for applicant.

This is a petition taken from the action of the examiner of trade-marks refusing to register the word "Solvent" as a trade-mark for medicines.

The position of the examiner is that the trade-mark is descriptive, or if not descriptive, it is deceptive. The applicant claims that the word is purely arbitrary. I am of the opinion that the examiner's position is correct. In this opinion I am confirmed by the fact that many of the medicines to which the mark in question is to be applied have a certain amount of solvent or dissolving power.

The decision of the examiner of trade-marks is affirmed.

S. T. Fisher,

Acting Commissioner.

April 24, 1896.

W. S. K.

April 20, 1909.

This is a petition taken from the action of the examiner

of trade-marks refusing to register the word "Calvert" as a trade-

mark for medicines.

The position of the examiner is that the word is

descriptive, or if not descriptive, it is misleading. He applies

the examiner's position is correct. In this opinion I

by the fact that many of the medicines to which the mark in ques-

tion is to be applied have a certain amount of solvent

ing power.

The decision of the examiner of trade-marks is affirmed.

E. T. Fisher,

April 20, 1909.

U. S. Patent Office.

Ex parte Silvermann & Company.

Trade-Mark for Garment Supporters.

Petition.

Recorded Vol. 19 p. 76.

Application filed April 25, 1894, No. 46,771.

Mr. H. A. Seymour for applicants.

This case was formerly before the Commissioner upon another petition from the decision of the examiner of trade-marks, refusing to register as a trade-mark a hole in the facing strips of garment supporters and a series of lines crossing one another visible through the hole and forming squares.

In the decision refusing registration to this alleged trade-mark it was stated that a portion of the application might contain registrable matter, as when the representation of a hole with cross lines within it is used. Acting upon this suggestion, the applicants subsequently amended the application and now seek registration of "the representation of a hole formed in the front or back facing strip of a suspender or like article," without amendment of the drawing. The objection to the drawing is that it is a true picture of the article which applicants manufacture; but a picture or a photograph of an article of manufacture is not registrable as a trade-mark, for the same reason that an accurate verbal description of such an article would not be registrable.

John S. Seymour,
Commissioner.

C. Patent Office.

Ex parte Shivvers.

Trade-Mark for Corporators.

Petition.

Application filed April 23, 1894. No. 46,871.

A. Seymour for applicants.

This case was recently before [illegible] petition from the decision of the [illegible] to register as a trade-mark a [illegible] through the hole and forming squares.

In the decision [illegible] it was stated that [illegible] registrable matter, as [illegible] lines within it [illegible] "the juxtaposition of a hole [illegible] strip of [illegible] tion. The petitioner [illegible] the article using [illegible] stamp of an article [illegible] registrable as a trade-mark, for the same reason that an account [illegible] of description [illegible]

Other dealers in suspenders have a right to use true pictures and photographic representations of their goods, as well as to use the ordinary and well-known words of the English language in describing them, and this is so whether the applicants are protected by a patent upon their goods or not, for the petition does not show that as matters now stand, the applicants are the owners of all rights under any patents which may have been granted. Even were this so they are capable of separate ownership and whoever may hereafter become the true owner of rights under a patent will have and must have a right to accurately describe his goods, either by true picture or by apt words.

It must be held, therefore, that the mark is not registrable as changed and amended. There is, however, apparently registrable matter in the mark. A circle with cross lines within it or superposed upon it might be sufficiently removed from descriptive matter to constitute a trade-mark which, if adopted by these applicants and used upon their goods, might be registrable, and this was intended to be the meaning of the former decision.

As matters now stand, the decision of the examiner of trade-marks is affirmed.

John S. Seymour,

Commissioner.

May 2, 1896.

U. S. PATENT OFFICE.

Washington, D.C. May 25, 1896.

Recorded Vol. 59, Page 108.

Registration of "Club Cock-Tails" For Mixed Drinks Allowed.

The examiner refused registration of the words "Club Cock-Tails as a trade mark for mixed drinks on the ground that the word "Cock-tails" was purely descriptive and the word "club", as shown by numerous registrations, has long been applied to beverages containing alcohol as an ingredient and had by such trade usage acquired a well defined descriptive character in connection with these goods. Moreover that in Cahm vs. Hofman House, reported in the Trade Mark Record, August 15, 1894, the word "Klub" was held to have acquired a special and well understood meaning as applied to wines and liquors and indicated that the goods so marked were of superior grade and quality.

The Commissioner in an indorsement held "The decision of the examiner refusing registration of the trade mark in this case is overruled.

(Signed.) John S. Seymour,

Commissioner.

Ex parte G. & H. Receiving Co.
Ret. No. 45191 (Cert. 28441).

U. S. PATENT OFFICE.

Washington, D.C.May 25, 1886.

Recorded Vol. 70, Page 108.

Registration of "Club Cock-Tails" For Mixed Drinks Allowed.

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The Commissioner in an indorsement said "The decision of the examiner refusing registration of the trade mark in this case is overruled.

(Signed.) John S. Seymour,

Commissioner.

APPLICATION
of
The New York Powder Company.
Decided June 5, 1896.

Recorded Vol. 59, Page 142.

S. T. Fisher,
Aacting Commissioner.

This is an appeal from the decision of the examiner of trademarks refusing to register the word "Blackdiamond" as a trade mark for the class of merchandise consisting of fire arms, ammunition, and explosives, the particular description of goods upon which the mark is used being blasting powder.

The examiner refused registration on the mark "Diamond", previously registered by Curtis, No.15,811,Aug.28,1888,used upon gunpowder, ammunition, and explosives, holding that as the word black is descriptive, the word "Blackdiamond" too nearly resembles "diamond" to be registered.

In the case of ex parte Tillman and Beadel, 17 MS.Dec., 307, a star of golden color, together with the words "Golden Star", was refused registration on the ground that such a mark was not sufficiently distinguishable from a representation of a star and the word "Star" without limitation as to color. In ex parte Caire, 15 O.G/,248, "Black Swan" was refused registration on the previously registered mark "Swan" for the same class of goods. In ex parte

APPLICATION
of
The New York Powder Company.
Decided June 5, 1886.

Recorded Vol. 58, Page 142.

S. T. Fisher,
Acting Commissioner.

This is an appeal from the decision of the examiner of trade-marks refusing to register the word "Blackdiamond" as a trade mark for the class of merchandise consisting of fire arms, ammunition, and explosives, the particular description of goods upon which the mark is used being blasting powder.

The examiner refused registration on the mark "Diamond", previously registered by Curtis, No.15,811,Aug.23,1888,used upon gunpowder, ammunition, and explosives, holding that as the word Black is descriptive, the word "Blackdiamond" too nearly resembles "diamond", to be registered.

In the case of ex parte Tillman and Beedel, 17 MS.Dec., 807, a star of golden color, together with the words "Golden Star", was refused registration on the ground that such a mark was not sufficiently distinguishable from a representation of a star and the word "Star" without limitation as to color. In ex parte Caire, 15 O.G.,248, "Black Swan" was refused registration on the previously registered mark "Swan" for the same class of goods. In ex parte

Ginter, 22 MS.Dec.,236, it was held that "Opera Puffs" too closely resembled "Puff" to be registered. "Sunshine" was rejected on "Sun", in ex parte Clark, 22 MS.Dec.,327. In ex parte Hillyard, 41 MS.Dec.,240, "Royal Dutch" was properly refused registration on "Royal" and "Queen Bess" was refused registration on "Queen Bee".

The appellant contends that his case is not parallel to those referred to in the decisions above cited and refers especially to ex parte Caire. He contends that the word "Blackdiamond" is not only different in appearance, but entirely different in meaning from the words "Black" and "Diamond", the former signifying mineral coal and the other powder upon which it is used, being employed extensively in coal mining, hence the word is remotely suggestive of the use to which the powder is put. There does not seem to be any difference in appearance between the words, and if there is it is immaterial and so slight as not to be noticed by the ordinary purchaser. Furthermore, there is no difference in sound, and an oral order for "black diamond" powder could be taken for one thing only.

As to the difference in meaning, the examiner has stated correctly that the alleged difference is negatived by the fac simile presented by the applicant, in which instead of illustrating coal,

Ginter, 22 MS.Dec.,336, it was held that "Opera Buffa" too closely resembled "Puff" to be registered. "Sunshine" was rejected on "Sun", in ex parte Clark, 22 MS.Dec.,327. In ex parte Hilyard, 41 MS.Dec.,240, "Royal Dutch" was properly refused registration on "Royal" and "Queen Bess" was refused registration on "Queen Bee". The appellant contends that his case is not parallel to those referred to in the decisions above cited and refers especially to ex parte Claire. He contends that the word "Blackdiamond" is not only different in appearance, but entirely different in meaning from the words "Black" and "Diamond", the former signifying mineral coal and the other powder upon which it is used, being employed extensively in coal mining, hence the word is remotely suggestive of the use to which the powder is put. There does not seem to be any difference in appearance between the words, and if there is it is immaterial and so slight as not to be noticed by the ordinary purchaser. Furthermore, there is no difference in sound, and an oral order for "black diamond" powder could be taken for one thing only.

As to the difference in meaning, the examiner has stated correctly that the alleged difference is negatived by the fact that presented by the applicant, in which instead of illustrating coal,

he has shown an ordinary cut diamond.

As regards the appellant's contention that he uses this mark on a different class of goodsmfrom that of Curtis, it may be said that the term "explosive" - the general class of goods - used by the appellant, covers the gunpowder of Curtis, and the particular goods - blasting powder - of appellant, just as in the India Rubber Comb Co. case, 16 MS.D.,38,it was held that a statement embracing several distinct classes of merchandise made of hard rubber were of a single class, and in ex parte Kampfe Bros.,58 MS.D.,cutlery was held to cover safety razors.

It is held that the word "black" being descriptive, and "diamond" having been registered for the same class of goods on which this applicant uses "Blackdiamond", the word presented for registration so nearly resembles the registered mark of Curtis as to cause confusion. This conclusion is borne out by the practice, as indicated bywthe decisions cited above.

The decision of the examiner of trade marks, refusing to register the mark of this applicant, is affirmed.

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As regards the appellant's contention that he uses this mark on a different class of goods from that of Curtis, it may be said that the term "explosive" - the general class of goods - used by the appellant, covers the gunpowder of Curtis, and the particular goods - blasting powder - of appellant, just as in the India Rubber Comb Co. case, 16 MS.D.,88,it was held that a statement covering several distinct classes of merchandise made of hard rubber were of a single class, and in ex parte Kemple Bros.,68 MS.D.,outlery was held to cover safety razors.

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The decision of the examiner of trade marks, refusing to register the mark of this applicant, is affirmed.

APPLICATION

of

Ex parte Humber & Company, of America, Ltd.

Decided June 5, 1896.

Recorded Vol. 59, page 147.

S. T. Fisher,

Acting Commissioner.

This is an appeal from the decision of the examiner on trade marks refusing to register as a trade mark for pneumatic tires for cycles a "series of stripes having contrasting colors," incorporated in the rubber of the tire or applied to the surface as a paint or stain.

In the specification it is stated:

> "The width, location or direction, as well as the color of the stripes may be varied without departing from the spirit of the trade mark ✕ ✕. For instance, the 'tread' portion may be made wider and of one color, and the two side portions narrow and of a different and contrasting color, or vice versa, or the stripes may all be made of the same width and of contrasting colors, and they may trend in straight or wavy parallelism."

The examiner's objection to registering the mark is that the above statement covers almost any kind of stripes, whether blue and black, red and black, red and blue, white and black, or any other combination, and that any such combinations may be either straight

A P P L I C A T I O N
of
Ex parte Humber & Company, of America, Ltd.

Decided June 5, 1899.

Recorded Vol. 89, page 147.

S. T. Fisher,

Acting Commissioner.

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The examiner's objection to registering the mark in that the above statement covers almost any kind of stripes, whether blue and black, red and black, red and blue, white and black, or any other combination, and that any such combinations may be either straight

or wavy parallelism, although the applicant's fac simile does not even show any kind of wavy parallelism; and that the statute did not anticipate the allowance of any such broad statement. His second objection to registering the mark is that even if the applicant is restricted to the precise stripes used it should not be registered, as "it is settled that ornamental coloring alone, while it may form an element of a trade mark cannot of itself constitute a technical trade mark."

To sustain his first point the examiner cited several decisions, the first of which is the Supreme Court case of Canal Co. v. Clark, 13 Wall., 311, where it was held that:

> "No one can claim protection for the exclusive use of a trade mark or trade name which would practically give him a monopoly in the sale of any goods other than those actually produced or made by himself. If he could, the public would be injured rather than protected, for competition would be destroyed. Nor can a generic name be employed as a trade mark, and the exclusive use of it be entitled to legal protection."

The examiner also cited the Commissioner's decisions in the cases of ex parte Adam Roth Grocery Co., 62 O.G., 315; Ex parte Hamilton Disinfectant Chemical Works, 27 MS.D., 342, and ex parte Duluth Imperial Mill Co., 52 MS.D., 379. To sustain his second point he cited the cases of ex parte Landrath, 31 O.G., 1441; Fleischmann et al. v. Starkey, 25 Fed. Rep., 127; Fisher v. Blank, 33 N.E.

or wavy parallelism, although the applicant's two similar doors not even show any kind of wavy parallelism; and that the statute did not anticipate the allowance of any such broad statement. His second objection to registering the mark is that even if the applicant is restricted to the precise shapes used it should not be registered, as "it is settled that ornamental coloring alone, while it may form an element of a trade mark cannot of itself constitute a technical trade mark."

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The examiner also cited the Commissioner's decisions in the cases of ex parte Adam Roth Grocery Co., 52 O.G., 315; Ex parte Hamilton Disinfectant Chemical Works, 57 MS.D., 242, and ex parte Imperial Mill Co., 52 MS.D., 278. To sustain his second point he cited the cases of ex parte Lambert, 81 O.G., 1441; Fleischmann et al. v. Starkey, 25 Fed. Rep., 127; Fisher v. Black, 88 M.S.

Rep. 1040, and Putnam Nail Co. v.Dulaney, 21 Atl. Rep.,391.

It is true that the statement used by the applicant is broad, but it does not seem that there can be any valid objection to its registration on this ground, so long as it is clear and definite. Nor is it thought that applicant's mark is "ornamental coloring alone." Instead of falling under the defisions above referred to, it seems to be within the doctrine laid down by ex parte Roxbury Carpet Co.,18 MS.Dec.,423, where it was said:

> "It is a mistake to say that it (the mark) has no substantial limitation. That it is a line of color running the length of the fabric defines it very clearly to the mind,and both from the nature of the material it is designed to distinguish and the manner of sale, it must be obvious that the particular way of applying the mark is the only one that woul certainly and fully identify the merchandise in the market.
>
> "The essence of the mark lies in its contrasting color. Whether white,black or gray,or anything else, it matters not, so long as it strikingly distinguishable from the body of the fabric,the carpet-backing with which it is inwoven. When so distinguishable, it quickly abstracts the eye, and thus by association serves to indicate origin or ownership.
>
> "The mark being of the character stated,I should be unwilling to confine the applicant to any one color in making it, when it is so obvious that the real arbitrary character would thus escape adequate protection. Nor need there be any limitation as to the particular portion of the backing, i/e/, at what part of its width it be applied."

See also section 1194 of Coddington's Digest of Trade Marks, where it is said:

> "A stripe on cloth, composed of one or more threads of different colors, woven either at the border end, and new by position or arrangement, is a good trade mark. (Article 1, law of 1857.)"

Reg. 1040, and Putnam Nail Co. v.Whitney, 81 Atl. Rep., 991.

It is true that the statement used by the applicant is broad, but it does not seem that there can be any valid objection to its registration on this ground, so long as it is clear and definite. Nor is it thought that applicant's mark is "ornamental coloring alone." Instead of falling under the decisions above referred to, it seems to be within the doctrine laid down by ex parte Norbury Carpet Co., 18 MS.Dec., 488, where it was said:

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"A stripe on cloth, composed of one or more threads of different colors, woven either at the border end, and new by position or arrangement, is a good trade mark. (Article I, law of 1857.)"

In ex parte Woodbury, 46 MS.14, a trade mark consisting of "the representation of lace", without limitation as to color or chape, was held to be a valid mark and registration allowed.

In ex parte Janowitz, 56 MS.Dec.,301, the essential feature of the mark presented for registration was said to be "a parallelogram divided diagonally into two triangles, one dark and the other light." The objection to registration was that the words "dark" and "light" included many colors and shades, and therefore the claim was not definite. It was held on appeal that if the cas was amended to set forth the two triangles as of contrasting colors, there would be no objection to registration.

The decision of the examiner in refusing registration is overruled.

In ex parte Woodbury, 40 MS.14, a trade mark consisting of "the representation of lace", without limitation as to color or shape, was held to be a valid mark and registration allowed.

In ex parte Jamowitz, 56 MS.Dec.,301, the essential feature of the mark presented for registration was said to be "a parallelogram divided diagonally into two triangles, one dark and the other light." The objection to registration was that the words "dark" and "light" included many colors and shades, and therefore the claim was not definite. It was held on appeal that if the case was amended to set forth the two triangles as of contrasting colors, there would be no objectio to registration.

The decision of the examiner in refusing registration is overruled.

APPLICATION
of
Ex parte Boston Woven Hose & Rubber Company.

Decided June 5, 1896.

Recorded Vol. 59, Page 150.

S. T. Fisher,

Acting Commissioner:

This is an appeal from the action of the examiner of trade-marks refusing to register a trade mark for wheel tires, the essential of which is definèd as a "red or reddish figure of definite shape and limited dimensions on or local to a portion of the tire, having a definite outline".

The examiner refused to register the mark on the ground that the application is not restricted to any form or dimensions; that the mere statement that any one of an unlimited number of known geometric figures may be used, provided it is colored red, is matter too infedinite to constitute a trade mark.

The fac simile of the mark shown is described in the language of the application as a well-defined figure having in general a diamond shape, with circular sides forming a convexo-convex figure and dyed or otherwise colored red or reddish, upon the marks in actual use. To the registration of such a mark the examiner has no objection.

APPLICATION
of
Ex parte Boston Woven Hose & Rubber Company.

Decided June 5, 1886.

Recorded Vol. 39, Page 180.

S. T. Fisher,

Acting Commissioner:

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The examiner refused to register the mark on the ground that the application is not restricted to any form or dimensions; that the mere statement that any one of an unlimited number of known geometric figures may be used, provided it is colored red, is matter too indefinite to constitute a trade mark.

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But the applicant is not satisfied to limit the case to this definite mark. He has expanded it by using the following language

"The mark has been and is considerably varied in shape, the leading distinctive feature being the red or reddish color of the mark. * * The particular shape of the symbol shown may be and is somewhat varied, the essential feature of the trade mark being a red or reddish figure of definite shape and limited dimensions on or local to a portion of the tire, having a definite outline".

And in the arrangement of February 19, 1896, the applicant says:

"Whether this mark is in the shape of an oval, an ellipse, a diamond, or any other similar oblong, square, or circular figure, he (the purchaser) recognizes at once the distinctive feature of a local mark having the peculiar color distinguishing the goods".

The application, however, is not even confined to such geometrical figures as are enumerated, but to any figure "having a definite outline." From this it seems clear that applicant considers the color, without reference to the form or shape, of the mark as the essential feature.

As is well said by Browne on Trade Marks, section 269, second edition:

"form is necessary to make <u>color</u> an essential feature of a trade mark. In other words, color alone cannot legally be deemed to be an arbitrary symbol. That form may be a geometrical figure, or the representation of an object having a fixed, definite shape, and being susceptible of description: thus, a circle, a square, a triangle; or an arrow, or an anchor, or a monogram; or any of an ~~indefinite~~ infinite variety of objects in nature or art, which may be easily described and readily apprehended. But nothing short of this requirement could be sufficient. * * A trade mark must

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"The mark has been and is considerably varied in shape, the leading distinctive feature being the red or reddish color of the mark. ~~X X~~ The particular shape of the symbol shown may be and is somewhat varied, the essential feature of the trade mark being a red or reddish figure of definite shape and limited dimensions on or local to a portion of the tire, having a definite outline".

And in the arrangement of February 13, 1896, the applicant says:

"Whether this mark is in the shape of an oval, an ellipse, a diamond, or any other similar oblong, square, or circular figure, the purchaser) recognizes at once the distinctive feature of a local mark having the peculiar color distinguishing the goods".

The application, however, is not even confined to such geometrical figures as are enumerated, but to any figure "having a definite outline." From this it seems clear that applicant considers the color, without reference to the form or shape, of the mark as the essential feature.

As is well said by Browne on Trade Marks, section 288, second edition:

"Form is necessary to make color an essential feature of a trade mark. In other words, color alone cannot legally be decreed to be an arbitrary symbol. That form may be a geometrical figure, or the representation of an object having a fixed, definite shape, and being susceptible of description: thus, a circle, a square, a triangle; or an arrow, or an anchor, or a monogram; or any of an indefinite infinite variety of objects in nature or art, which may be easily described and readily apprehended. But nothing short of this requirement could be sufficient. ~~X X~~ A trade mark must

be something that can impress its peculiarity of configuration upon the memory, as plainly as it is impressed on goods. We can describe and recognize a Maltese cross, a diamond within a circle, a five-pointed star, a flag of fixed proportions having a certain number of stripes and stars, or national emblems. Then color may well be a valid essential constituent; but it is hardly within the ragge of possibility to convey an adequate idea of a thing that has no fixed invariable limits."

The present case falls within the doctrine thus laid down. The case in its present form is too indefinite to be registered as a legal trade mark.

The decision of the examiner of trade mark is affirmed.

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The present case falls within the doctrine thus laid down.

The case in its present form is too indefinite to be registered as a legal trade mark.

The decision of the examiner of trade mark is affirmed.

APPLICATION

of

Sanford C. Haviland.

Decided June 5, 1896.

Recorded VoL/ 59, Page 154.

S. T. Fisher,

Acting Commissioner:

This is an appeal from the decision of the examiner of trademarks, refusing to register the word "Alpine" as a trade mark for "bronchial lozenges". The refusal is based upon the ground that this mark has already been registered for the same classof goods, as shown by Certificate No.8,387,issued June 21,1881,to Weber,who used the mark on "herb teas,herb balsams,and extracts",and that th the word is geographical.

Considering first whether "bronchial lozenges" are of the same class of goods as "herb teas,herb balsams,and extracts:" While it may be said that they areunder the general class of medicinal preparations or druggists' supplies, yet they are not so closely related that one would ve mistaken for the other. The ordinary purchaser ordering "Alpine Lozenges",would know that his order was not properly filled if he received herb tea or herb balsams or extracts. Nor would a druggist dealing in these different goods confound one with the other; nor is there any valid reason

A P P L I C A T I O N
of
Sanford C. Haviland.

Decided June 5, 1896.

Recorded Vol. 59, Page 154.

S. T. Fisher,

Acting Commissioner:

This is an appeal from the decision of the examiner of trade-marks, refusing to register the word "Alpine" as a trade mark for "bronchial lozenges". The refusal is based upon the ground that this mark has already been registered for the same classof goods, as shown by Certificate No. 8,887, issued June 21, 1881, to Weber, who used the mark on "herb teas, herb balsams, and extracts", and that the word is geographical.

Considering first whether "bronchial lozenges" are of the same class of goods as "herb teas, herb balsams, and extracts:" While it may be said that they supersede the general class of medicinal preparations or druggists' supplies, yet they are not so closely related that one would be mistaken for the other. The ordinary purchaser ordering "Alpine lozenges", would know that his order was not properly filled if he received herb tea or herb balsams or extracts. Nor would a druggist dealing in these different goods confound one with the other; nor is there any valid reason

for believing that "Alpine Lozenges" are impregnated with "Alpine herb teas" or "Alpine herb balsams" or "Alpine extracts",referred to in the trade mark cited,and itmis not believed that the registrant intended to include in the class of goods named by him bronchial lozenges.

As to the geographical feature of the mark: It appears to fall within the second class of cases referred to in ex parte Hendley, 57 MS. Dec.,407. It is trup that Alpine means pertaining to or connected with the Alps. But it has other meanings, as any lofty mountain; very high; elevated. The use of this word would not convey the idea that the logenzes were made in the Alps or from anything grown there. Its use in this case is purely fanciful, and as thus used it is a valid trade mark.

The decision of the examiner of trade marks is reversed.

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As to the geographical feature of the mark: It appears to fall within the second class of cases referred to in ex parte Hendley, 87 MS. Dec., 407. It is true that Alpine means pertaining to or connected with the Alps. But it has other meanings, as any lofty mountain; very high; elevated. The use of this word would not convey the idea that the lozenges were made in the Alps or from anything grown there. Its use in this case is purely fanciful, and as thus used it is a valid trade mark.

The decision of the examiner of trade marks is reversed.

May 27, 1896. M. H.

U. S. Patent Office.

Ex parte C. J. Countie & Company.

Trade-Mark for Beverages.

Petition. Recorded Vol.59, p.157.

Application for registration filed May 22, 1895.

Messrs. Chandlee & Chandlee for applicants.

This is an appeal from the decision of the examiner of trade-marks, refusing to register as a trade-mark the words "Roman Punch, in connection with the words non-alcoholic, or words of similar import."

As the case was originally filed the appellants stated that the essential feature of their mark was the words "Roman Punch." Registration was refused in view of the Commissioner's decision in the case of ex parte Rowe, 50 MS.Dec., 166, where it was held that the words "Cherry Cocktail" are descriptive when applied to a non-alcoholic drink, and reference was made to "Cooling Drinks and Dainty Cups," Terrington, London, 1872, pp. 221 to 223, to show that Roman punch is a beverage containing alcoholic liquor. The Century Dictionary defines Roman punch as "a water ice, flavored usually with lemon, and mixed with rum or other spirit."

I have carefully considered the case of ex parte Rowe, and fully agree with the doctrine therein laid down and think the rejection was well taken, as coming within said doctrine. Evidently the appellants are of the same opinion, as they acquiesced in the rejection and attempted to overcome it by amending the case to indicate

This is an appeal from the decision of the examiner of trade-marks, refusing to register as a trade-mark the words "Roman Punch," in connection with the words non-alcoholic, or words of similar import."

As the case was originally filed the applicants stated that the essential feature of their mark was the words "Roman Punch." Registration was refused in view of the Commissioner's decision in the case of ex parte Coca, C. D. 1907, 328, where it was held that the words "Celery Tonic" were descriptive when applied to a non-alcoholic drink, and a reference was made to "Cooling Drinks and Dainty Cups," Pierce, London, 1872, pp. 221 to 223, to show that Roman Punch is a beverage containing alcoholic liquor. The Century Dictionary defines Roman punch as "a delicate, flavored usually with lemon, and mixed with rum or other spirit."

I have carefully considered the case of ex parte Coca, and fully agree with the doctrine therein laid down and think the rejection was well taken as coming within said doctrine. Evidently the applicants are of the same opinion, as they acquiesced in the rejection and attempted to overcome it by amendment. The case is better

Recorded Vol. 89, p. 157.

Application for registration filed May 2, 1904.

Trade-mark for beverages.

Petition.

Ex parte J. T. Cowdin & Company.

U. S. Patent Office.

that they used these words as a trade-mark on non-alcoholic beverages. The attempted limitation of the mark originally presented by the addition of the words "non-alcoholic" is immaterial, and such words would not be noticed by the ordinary purchaser. The salient feature of the mark is "Roman Punch," and this is what the appellant's goods would be known by in the trade.

As was stated in the case of ex parte Metropolitan Watch Co., 44 TM.Dec.,272:

> "The essential feature of a trade-mark is not what the registrant elects to designate as such, but that which strikes the public as its most salient feature, and as lending character to the entire mark."

The examiner in his answer to the appeal states that another ground for refusing to register the mark is the geographic character of the word "Roman." In view of the otherwise non-registrable character of the mark, this new ground for rejection need not be considered here.

The decision of the examiner of trade-marks in refusing registration is affirmed.

C. T. Fisher,

Acting Commissioner.

June 6, 1896.

S. T. Fisher.

May 26, 1896. M.H.

U. S. Patent Office.

Ex parte S. Rosenberger & Company.

Trade-Mark for Cigars? Recorded Vol.59, p.162.

Petition.

Application filed July 6, 1896.

Messrs. Wood & Boyd and Jas. L. Norris for applicants.

This is an appeal from the decision of the examiner of trade-marks refusing to register as a trade--mark for cigars "A representation of a bundle of cigars with two transverse stripes across its face, one near the end, and these connected by two diagonal stripes crossing each other at or near the center of the length of the face of the bundle."

The essential feature is said to be "the stripes as represented on the face of a representation of a bundle of cigars."

The ground for refusing registration is that the matter shown is a representation of the merchandise as it is put up, and as such is purely descriptive in character.

In the case of ex parte Spencer, 14 MS.Dec., 153, where a picture of a lathe with the overhead countershaft laid across its bed, with the words "John E. Spencer" above it and "Standard [illegible] Lathes" below it, was presented for registration as a trade-mark for lathes, it was held that such a mark was descriptive and registration was refused. Substantially the same ruling was made in the cases of ex parte Pratt and Farmer, 10 O.G.,666, and ex parte Smith, 16 O. G. 679.

U. S. Patent Office.

In re Spencer & Company.

Trade-Mark for Cigars.

Petition.

Decision filed July 7, 1899.

Sears. Used a word and Ins. U. Torres for applicants.

This is an appeal from the decision of the examiner of trade-marks refusing to register as a trade-mark for cigars "a representation of a bundle of cigars with two transverse stripes across the one near the end, and those connected by two diagonal stripes crossing each other at or near the center of the length of the face of the bundle."

The essential feature is said to be "the outline as represented on the face of a representation of a bundle of cigars."

The ground for refusing registration is that the matter shown is a representation of the merchandise as it is put up, and as such is purely descriptive in character.

In the case of In re Spencer, 14 D. C., 142, where a picture of a label with the words "Spencer" across its end, with the words "Spencer" above it and "Standard Perfecto" below it, was presented for registration as a trade-mark for tobacco, it was held that such a mark was descriptive and registration was refused. Substantially the same ruling was made in the case of In re Curtis Pratt and Packer, 14 D. C., 144, and In re Smith, 14 D. C., 149.

Recorded Vol. 89, p. 182.

In the recent case of ex parte Silvermann & Co., 59 MS.Dec., 76, where applicants sought to register as a trade-mark for suspenders "the representation of a hole formed in the front or back facing strip of a suspender or like article," to show a wire gauze strengthening piece, it was held that -

> "a picture or a photograph of an article of manufacture is not registrable as a trade-mark, for the same reason that an accurate verbal description of such an article would not be registrable. Other dealers in suspenders have a right to use true pictures and photographic representations of their goods, as well as to use the ordinary and well-known words of the English language in describing them, and this is so whether the applicants are protected by a patent upon their goods or not, for the petition does not show that as matters now stand, the applicants are the ~~xx~~ owners of all the rights under any patents which may have been granted. Even were this so, they are capable of separate ownership and whoever may hereafter become the true owner of rights under a patent will have and must have a right to accurately describe his goods, either by true pictures or by apt words."

The present case falls within the doctrine thus enunciated. The decision of the examiner of trade-marks refusing registration is affirmed.

S. T. Fisher,

Acting Commissioner.

June 6, 1896.

G. T. Fisher,

Acting Commissioner.

U. S. Patent Office.

Ex parte The Western New York Preserving and Manufacturing Co.

Trade-Mark for Canned Hulled Corn.

Recorded Vol.59 p.164.

Petition.

Application for registration filed January 16, 1896.

Messrs. M. J. Stark & Sons for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register as a trade-mark the word "Hopkins" on a white rectangular background surrounded by a wide bronze border."

The applicant says:

> "The class of merchandise to which this trade-mark is appropriated is Canned Goods, and the particular description of goods comprised in such class on which it is used is Canned Hulled Corn."

or steamed hominy, as shown by the fac-simile. The goods are put up in cans and a label bearing the mark pasted on the same.

Registration was refused on the trade-mark "Hopkins' Improved Prepared Flour," registered by Hopkins & Co., April 29, 1873, No.1, 263, used upon "a compound of flour made of wheat or other grain and other substances, prepared so as to be self-raising w en used in cooking," put up in paper bags or packages bearing the trade-mark The word "Hopkins" is the salient part of each mark, and it may be said to be the"essential feature of the mark."

The question to be decided is whether "Canned Hulled Corn" (or steamed hominy) is included in the class of goods named by the registered mark. The examiner holds that under the doctrine of

U. S. Patent Office.

Ex parte The Western New York Preserving and Manufacturing Co.

Trade-Mark for Canned Hulled Corn.

Petition.

Application to registration filed January 14, 1916.

Sears. M. J. Stark & Sons for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register as a trade-mark the word "Hopkins" on a white rectangular background surrounded by a wide brown border."

The applicant says:

"The class of merchandise to which this trade-mark is appropriated is Canned Goods, and the particular description of goods comprised in such class on which it is used is Canned Hulled Corn."

or sixteen ounces, as shown by the Tac-simile. The goods are put up in cans and a label bearing the mark pasted on the same.

Registration was refused on the trade-mark "Hopkins' Improved Prepared Flour," registered by "Ogilvie & Co.," April 22, 1878, No. 2093, used upon "a combination of flour made of wheat or other grain and other substances, prepared so as to be self-raising when used in cooking," put up in paper bags or packages bearing the trade-mark. The word "Hopkins" is the salient part of each mark, and it may be said to be the "essential feature of the mark."

The question to be decided is whether "Canned Hulled Corn" (or stewed Country) is included in the class of goods named by the registered mark. The examiner holds that under the decisions of

Recorded Vol. 59
p. 164.

ex parte North Dakota Milling Co., 58 MS.Dec.,176, canned hulled corn and "a compound of flour made of wheat and other goods" are the same class. In that case the words "Cream of Wheat" as a trade-mark for "breakfast foods, cracked wheat, wheat grits,&c.," was refused registration on substantially the same mark for"wheat flour." It seems evident that these goods are of the same class, and the appellant in said case so considered them, as in his application as originally filed he included "flour" in the class of goods on which his mark was used and which were put up in the same kind of packages.

In the present case, however, it is thought that the goods are not of the same class and that the appellant or registrant did not intend to include in his statement as to the class of goods upon which his mark was used the class of goods named by the other. There is no similarity between the packages containing the goods. The ordinary purchaser would not mistake one class of goods for the other or be led to believe that the ingredients of the registrant's goods were used or put up in the goods of the applicant, as was the case in Fno v. Dunn, Cox's Manual of Trade-Mark Cases, p. 488.

The decision of the examiner of trade-marks is reversed.

S. T. Fisher,

Acting Commissioner.

June 9, 1896.

The decision of the examiner of trade-marks is reversed.

S. T. Fisher,

M. H.

U. S. Patent Office.

Recorded Vol.59,p.22

Ex parte Frank C. Fowler.

Label for Ammunition.

Appeal from Examiner of Trade-Marks.

Application for registration filed January 25, 1896.

Messrs. Chandlee & Chandlee for applicant.

This is an appeal taken from the action of the examiner refusing to register as a label for ammunition the word "Squirrel" and the pictorial representation of a squirrel. The appellant states that "In use the label is printed, stamped, or otherwise affixed, generally to the outer face of the top wad of a shell containing a 'squirrel' load."

The examiner refused registration on the ground that the act of June 18, 1874, excludes trade-marks from the benefits thereof, and that a label cannot be registered as such if it contains trade-mark matter, until after such device is registered as a trade-mark.

The question of the registry of labels was considered at length by the Supreme Court in the case of Higgins v. Keuffel, 140 U.S., 428. In that decision it was said that the eighth section of Article I of the Constitution of the United States, which declares that

> "the Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries,"

U. S. Patent Office.

Recorded Vol. 89, p. 229

Ex parte Frank C. Fowler.

Label for Ammunition.

Appeal from Examiner of Trade-Marks.

Application for registration filed January 25, 1896.

Messrs. Chandlee & Chandlee for applicant.

This is an appeal taken from the action of the examiner refusing to register as a label for ammunition the word "Squirrel" and the pictorial representation of a squirrel. The appellant states that "In use the label is printed, stamped, or otherwise affixed, generally to the outer face of the top wad of a shell containing a 'squirrel' load."

The examiner refused registration on the ground that the act of June 18, 1874, excludes trade-marks from the benefits thereof, and that a label cannot be registered as such if it contains trade-mark matter, until after such device is registered as a trade-mark.

The question of the registry of labels was considered at length by the Supreme Court in the case of Higgins v. Keuffel, 140 U.S., 428. In that decision it was said that the eighth section of Article I of the Constitution of the United States, which declares that

> "the Congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries,"

"does not have any reference to labels which simply designate or describe the articles to which they are attached, and which have no value separated from the articles, and no possible influence upon science or the useful arts."

It was also said:

"To be entitled to a copyright the article must have by itself some value as a composition, at least to the extent of serving some purpose other than as a mere advertisement or designation of the subject to whic h it is attached."

From the appellant's statements in the record it is evident that the sole purpose of his label is to designate what the packages to which it is attached contain, and that it is valuable only when connected to such packages as descriptive of their contents. The label of itself is not intended to instruct the reader, and it has not by itself value as a composition. It does not in any sense have any influence upon science or the useful arts.

As the appellant's label is not such a label as may be registered under the ruling of the decision above noted, the question as to whether it contains trade-mark matter need not be considered here.

The decision of the examiner in refusing to register the label, as such, is affirmed.

S. T. Fisher,

Acting Commissioner.

June 23, 1896.

M.S.M.

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As the appellant's label is not such a label as may be registered under the ruling of the decision above noted, the question as to whether it contains trade-mark matter need not be considered here.

The decision of the examiner in refusing to register the label, as such, is affirmed.

C. T. Fisher,

Acting Commissioner.

June 23, 1896.

July 14, 1896. S.M.S.

U. S. Patent Office.

Ex parte Matthew Queenan. Recorded Vol.59, p.359.

Trade-Mark for Medicinal Lotions.

Petition.

Application for registration filed April 13, 1896, No. 51,278.

Mr. A.M.Wooster and Mr. Arthur W. Harrison for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register the words "Quince and Shrub" as a trade-mark for medicinal lotions.

The examiner holds that the words are either descriptive or deceptive and that consequently they should not be registered. Applicant states that the words are used in an entirely fanciful sense; that the lotion contains no extract of quince and no shrub, but that it is an abbreviation of the names of the first two men who used his lotion.

It seems to me that the words in question are calculated to give the impression that the lotion contains, or is made from, the quince tree or its fruit and other fruits. The position taken by the examiner that the words are misleading is therefore sound and his decision is affirmed.

S. T. Fisher,

Acting Commissioner.

July 24, 1896.

W.S.M.

July ~~23~~, 1896. S.E.T.

U. S. Patent Office.

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Ex parte George W. Smith & Son.

--o-O-o--

Trade-Mark for Cough Drops.

--o-O-o--

Petition. Recorded Vol.59,, p.356.

--o-O-o--

Application for registration filed May 14, 1896.

--o-O-o--

Mr. Geo. E. Lemon for applicants.

--o-O-o--

This is an appeal from the decision of the examiner of trade-marks refusing to register the mark which applicants say consists of "two circles or rings arranged out of line with each other and connected by a bar, the circles or rings enclosing full-face bust portraits of the registrants."

The examiner's refusal was based upon the prior registered mark to Smith Brothers, No. 20,907, dated March 29, 1892. I am of the opinion that the proposed mark so nearly resembles the registered mark that it would be liable to deceive the ordinary purchaser.

The decision of the examiner is affirmed.

S. T. Fisher,

Acting Commissioner.

July 24, 1896.

M. S. M.

July 24, 1896.

Acting Commissioner.

S. T. Fisher,

The decision of the examiner is affirmed.

of the opinion that the proposed mark so nearly resembles the registered mark that it would be liable to deceive the ordinary purchaser."

The examiner's refusal was based upon the prior registered mark to Smith Brothers, No. 30,907, dated March 23, 1886. I am

ent portraits of the registrants."

ed and connected by a bar, the circles or rings enclosing full-face

states of "two circles or rings crossed out of line with each other-

trade-marks relating to registers the mark which applicants say con-

Appeal No. 1896.

Application for registration filed May 14, 1896.

Serial No. 89,---.

Recorded Vol. 89, p. ---.

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Wm. Geo. E. Lemon for applicants.

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Petition.

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Trade-Mark for Cough Drops.

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Ex parte George W. Smith & Son.

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U. S. Patent Office.

Sept. 17, 1896. M.H.

U.S.Patent Office.

Ex parte S. Hernsheim Brothers & Co., Limited.

Trade-Mark for Leaf Tobacco,&c. Recorded Vol. 60, p.25.

Appeal from Examiner of Trade-Marks.

Application for registration filed June 18, 1896, No.51,668.

Messrs. Briesen & Knauth for applicants.

This is an appeal taken from the refusal of the examiner of trade-marks to register the words "Black Tiger, or the symbol thereof," as a trade-mark for cigars and tobacco.

The examiner's refusal was based upon the registered trade-mark of the Merchants' Tobacco Company, No.4,827, dated July 3, 187. Applicants practically admit that the previously registered mark is substantially the same as their mark; but they claim that as said mark was not registered under the law of March 3, 1881, it is void.

The examiner states that in such cases applicants should, in accordance with the decision ex parte American Lead Pencil Company, C.D., 1892, 199, request an interference with the registered mark. The office will then notify the registrant that an application for registration is pending with which the registered mark would interfere, if it were registered under the existing act, and that sixty days will be allowed for the registrant to make application for a new registration.

The applicants state that they have no objection to this proceeding. It is therefore directed that such a notice be sent to

Sept. 17, 1896.

U.S.Patent Office.

Ex parte S. Hernsheim Brothers & Co., Limited.

Trade-Mark for Leaf Tobacco,&c. Recorded Vol. 60, p.25.

Appeal from Examiner of Trade-Marks.

Application for registration filed June 18, 1896, No.81,698.

Messrs. Briesen & Knauth for applicants.

This is an appeal taken from the refusal of the examiner of trade-marks to register the words "Black Tiger, or the symbol thereof," as a trade-mark for cigars and tobacco.

The examiner's refusal was based upon the registered trade-mark of the Merchants' Tobacco Company, No.4,827, dated July 3, 1877. Applicants practically admit that the previously registered mark is substantially the same as their mark; but they claim that as said mark was not registered under the law of March 3, 1881,it is void.

The examiner states that in such cases applicants should, in accordance with the decision ex parte American Lead Pencil Company, C.D., 1892, 199, request an interference with the registered mark. The office will then notify the registrant that an application for registration is pending with which the registered mark would interfere, if it were registered under the existing act, and that sixty days will be allowed for the registrant to make application for a new registration.

The applicants state that they have no objection to this proceeding. It is therefore directed that such a notice be sent to

the registrant and that the present application be held for sixty days after the date of such notice, unless an interfering application is filed, in which case the usual proceedings will be had.

S.T.Fisher,

Acting Commissioner.

September 18, 1896.

M.S.M.

the registrant and that the present application be held for thirty
days after the date of such notice, unless an interference proceed-
ing is filed, in which case the usual proceedings will be had.

S. A. Fisher,

Acting Commissioner.

September 18, 1896.

C. M.

Sept. 17,1896. M.H.

U.S.Patent Office.

Ex parte S. Hornsheim Brothers & Co., Limited.

Trade-Mark for Leaf Tobacco, &c.

Appeal from Examiner of Trade-Marks. Recorded Vol. 60, p. 26.

Application filed June 18, 1896, No. 51,667.

Messrs. Briesen & Knauth for applicants.

S. T. Fisher,
Acting Commissioner.

This is an appeal taken from the refusal of the examiner of trade-marks to register the words "Black Lion, or the representation of a lion," as a trade-mark for cigars and tobacco.

The examiner's refusal was based upon the registered trade-marks of the Merchants' Tobacco Company, No.4,829, dated July 3, 1877, and D. Hirsh & Co., No.4,747, dated November 1, 1870, and re-registered June 19, 1877. Applicants practically admit that the previously registered marks are the same as their mark; but they claim that as said marks were not registered under the law of March 3, 1881, they are void.

The examiner states that in such cases applicants should, in accordance with the decision ex parte American Lead Pencil Company, C.D., 1892, 199, request an interference with the registered marks. The office will then notify the registrants that an application for registration is pending with which the registered marks would interfere, if they were registered under the existing act, and that sixty days will be allowed for the registrants to make application for new registrations.

Ex parte P. Lorillard & Co., Limited.

Trade-Mark for Leaf Tobacco, &c.

Appeal from Examiner of Trade-Marks. P.R.

Application filed June 12, 1893, No. 81,467.

Marks. Prisoner & Kenyon for applicants.

This is an appeal taken from the refusal of the examiner of trade-marks to register the words "Black Lion," or the representation of a "Lion," as a trade-mark for cigars and tobacco.

The examiner's refusal was based upon the registered trade-marks of the Merchants' Tobacco Company, No. 4,299, dated July 5, 1877, and B. Kirby & Co., No. 4,747, dated December 7, 1880, and registered June 10, 1879. Applicants practically admit that the previously registered marks are the same as their mark; but they claim that as trade marks were not registered under the law of March 3, 1881, they are void.

The examiner states that in such cases applicants should, in accordance with the decision in ex parte American Lead Pencil Company, G.D., 1892, 129, request an interference with the registered marks. The office will then notify the registrants that an application for registration is pending with which the registered marks would interfere, if the same remained under the existing rule, and that sixty days will be allowed for the registrants to make application for new registrations.

U.S.Patent Office.

The applicants state that they have no objection to this proceeding. It is therefore directed that such notices be sent to the registrants and that the present application be held for sixty days after the date of such notices, unless an interfering application is filed, in which case the usual proceedings will be had.

S. T. Fisher,

Acting Commissioner.

September 18, 1896.

M.S.M.

The applicants state that they have no objection to this proceeding. It is therefore directed that such notices be sent to the registrants and that the present application be held for sixty days after the date of such notices, unless an interfering application is filed, in which case the usual proceedings will be had.

B. T. Tabor,

Acting Commissioner.

September 13, 1898.

Sept. 16, 1896. M. H.

U. S. Patent Office.

Ex parte A. G. Spalding & Brothers.

Trade-Mark for Game Apparatus.

Appeal from Examiner of Trade-Marks.

Application for registration filed June 8, 1896, No. 51,618.

Messrs. Wiles & Greene for applicants.

Recorded Vol. 60, p. 76.

This is an appeal from the decision of the examiner of trade-marks refusing to register the word "League" as a trade-mark for "base-balls, baseball bats, masks, mitts, body shields, and other apparatus commonly used in playing the game of baseball."

Registration is refused on the ground that appellants have no exclusive right to the word, as any manufacturer who is making such goods for a baseball league would have a right to mark his goods with the word "League." It is well known that appellants have been supplying their goods for a number of years to the League- National League. They have attempted to show that when they first adopted this word there was only one baseball league and the word "League" applied to baseball goods, especially to baseballs, indicated that they have been adopted or been sanctioned by that League, the National League. This may be all true, but it does not give them the exclusive right to the mark. The record shows however, that they are not the only ones who supply the League with their goods, as shown by Spalding's Baseball Guide, 1896, page 169, where the Reach ball is mentioned. It is clear therefore that Reach has an equal right with appellants to mark his

U. S. Patent Office.

Ex parte A. G. Spalding & Brothers.

Trade-Mark for Game Apparatus.

Appeal from Examiner of Trade-Marks.

Application for registration filed June 8, 1896, No. 21,618.

Messrs. Wiles & Greene for applicants.

This is an appeal from the decision of the examiner of trade-marks refusing to register the word "League" as a trade-mark for "base-balls, baseball bats, masks, mitts, body shields, and other apparatus commonly used in playing the game of baseball."

Registration is refused on the ground that applicants have no exclusive right to the word, as any manufacturer who is making such goods for a baseball league would have a right to mark his goods with the word "League." It is well known that applicants have been supplying their goods for a number of years to the League-National League. They have attempted to show that when they first adopted this word there was only one baseball league and the word "League" applied to baseball goods, especially to baseballs, indicated that they have been adopted or been associated with that League, the National League. This may be all true, but it does not give them the exclusive right to the mark. The record shows, however, that they are not the only ones who supply the game with their goods, as shown by Spalding's Baseball Guide, 1896, page 159, where the Reach ball is mentioned. It is clear therefore that Reach has an equal right with appellants to mark his

Reported
Vol. 80,
p. 726.

goods with the word "League" to show that such goods are adopted and used by the League. Furthermore, there are other manufacturers who are supplying their goods to other leagues, if not to the League, and these manufacturers have a right to stamp their goods with this word.

If a league of baseball clubs - the League, for example - should manufacture the goods used by it, it would have as good a right as appellants, if not better, to mark such goods with the word "League," and it could not be deprived of this right. See the decisions in the cases of Pattberg & Bros., 53 MS.Dec., 49; Silverman & Co., 56 MS.Dec. 316; Williams & Co., 57 MS.Dec. 152, and Peters Cartridge Co., 58 MS. Dec. 229, cited by the examiner in his answer to the appeal.

Appellants have referred to several marks which they think are on all fours with theirs and which have been registered, as going to show that their mark should also be registered. Whether such marks were properly registered or not, it is not for me to say. But an error committed in registration is not to be followed as a precedent; ex parte Smith, 28 MS. Dec. 164.

The decision of the examiner is affirmed.

S.T.Fisher,

Acting Commissioner.

September 25, 1896

W.S.M.

goods with the word "League" to show that ~~xxx~~ such goods are manufactured and sold by the League. Furthermore, there are other manufacturers who are supplying their goods to other leagues, if not to the League, and these manufacturers have a right to stamp their goods with this word.

If a league of baseball clubs - the League, for example - should manufacture the goods used by it, it would have as good a right as applicants, if not better, to mark such goods with the word "League," and it could not be deprived of this right. See decisions in the cases of Patching & Bros., 93 T.D.Dec., 49; Silverman & Co., 94 T.D.Dec. 316; Williams & Co., 97 T.D.Dec. 149, and Peters Cartridge Co., 94 T.D. Dec. 455, cited by the examiner in his answer to the appeal.

Applicants have objected to several marks which they think are on all fours with theirs and which have been registered, as going to show that their mark also be registered.

Whether such marks were properly registered or not, it is not for me to say. But an error committed in registration is not to be followed as a precedent; ~~xx~~ Parke Davis, 92 T.D. Dec. 104.

The decision of the examiner is affirmed.

G.T.Tisher,

Commissioner.

September 25, 1926

June 25, 1896. M.H.

U. S. Patent Office.

Ex parte Andrew Lindsay.

Recorded Vol. 60, page 83.

Trade Mark For Flour.

Appeal from Examiner of Trade-Marks.

Application for registration filed March 26, 1896, No. 51,124.

Mr. George E. Lemon for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register the word "Brilhante" as a trade-mark for flour, on the ground that it too nearly resembles the word Brilliant, previously registered to Jenkins & Hoover, No. 4,518, April 3, 1877.

Appellant's contention for registration is (1) that there is a great difference, both in appearance and sound, between the two words; (2) that no objection has been raised by Jenkins & Hoover to his use of the word sought to be registered; (3) that the word Brilliant is an English word in common use, while the word "Brilhante" is not found in the English dictionaries.

The second ground of appellant's contention is disposed of by the fact that appellant has produced no evidence to show that the registrants do not object to his use of the word sought to be registered. The first and third grounds of contention may be covered together. Because one word is found in the English dictionary and the other not is no reason for allowing registration of the latter word. Where two words - as in the present case - so nearly resemble each other, in sound and appearance, or in either, as to

June 25, 1896.

U. S. Patent Office.

Ex parte Andrew Lindsey.

Trade Mark For Flour.

Appeal from Examiner of Trade-Marks.

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pplication for registration filed March 26, 1896, No. 81,194.

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r. George E. Lemon for applicant.

This is an appeal from the decision of the examiner of
rade-marks refusing to register the word "Brilliante" as a trade-mar
rk for flour, on the ground that it too nearly resembles the
rd Brilliant, previously registered to Jenkins & Hoover, No.
018, April 3, 1877.

Appellant's contention for registration is (1) that there
a great difference, both in appearance and sound, between the
o words; (2) that no objection has been raised by Jenkins &
over to his use of the word sought to be registered; (3) that the
rd Brilliant is an English word in common use, while the word
rilbante" is not found in the English dictionaries.

The second ground of appellant's contention is disposed
by the fact that appellant has produced no evidence to show that
s registrants do not object to his use of the word sought to be
gistered. The first and third grounds of contention may be con-
d together. Because one word is found in the English dictionary
the other not is no reason for allowing registration of the
ter word. Where two words - as in the present case - so nearly
emble each other, in sound and appearance, or in fact, as to

cause confusion, registration should be refused. See Warner & Co., 24 MS.Dec., 151, where "Thapsine" was refused on "Capcine;" Shaen et al., 30 MS.Dec., 1, where "Arcana" was refused on "Arcadia," and the cases cited by the examiner.

Another valid reason advanced by the examiner why the word should not be registered is that "Brilhante" is a Portuguese word meaning brilliant, and as appellant uses the mark in commerce with Brazil, where the Portuguese language is familiar, the two words convey the same meaning to some of the people with whom appellant has commerce.

The decision of the examiner of trade-marks is affirmed.

S. T. Fisher,

Acting Commissioner.

September 25, 1896.

M.S.F.

cause confusion, registration should be refused. See Warner & Co.'s
Ap. 's Dec., 1871, where "Thespine" was refused on "Aspoine;" Dixon
et al., 50 Fed. Rep., 1, where "Arcuna" was refused on "Arcadia,"
and the cases cited by the examiner.

Another valid reason advanced by the examiner why the
word should not be registered is that "Brilhante" is a Portuguese
word meaning brilliant, and as ~~applicant~~ applicant uses it mark in
commerce with Brazil, where the Portuguese language is familiar,
the two words convey the as a meaning to some of the people with
whom applicant has commerce.

The decision of the examiner of trade-marks is affirmed.

C. T. Tiffer,

Acting Commissioner.

September 25, 1896.

November 10, 1896.

S.E.T. (K.S.M.)

U.S.Patent Office.

Ex parte The Thomson & Taylor Spice Co.

Recorded Vol.60, p.215.

Trade-Mark for Foods and Beverages.

Petition.

Application for registration filed June 1, 1896, No. 51,564.

Messrs. Offield, Towle & Linthicum for applicants.

This is an appeal from the decision of the examiner of trade-marks refusing to register the wordx "Kola-Malto" as a trade-mark for a certain powder.

The examiner held that the word in question is descriptive "as indicating the presence of kola and of malt in the articles to which it is applied." The applicant urges that the word is not descriptive but merely suggestive, and cites various trade-marks that have been recently allowed, such as Kolo-Caffein, No. 27,366, Pep-Kola, No. 28,444, and Kola-Seltzer, No. 28,445.

I am of the opinion that the examiner's objection is well taken and his decision is therefore affirmed.

S.T.Fisher,

Assistant Commissioner.

November 15, 1896.

Petition.

S.F.E.

U. S. Patent Office.

Ex parte Wartmiller brothers.

Recorded Vol. 60, page 282.

Trade-Mark for Medical Compound.

Petition.

Application for registration filed August 28, 1896, No. 52,046.

Mr. O. J. Bailey for applicants.

This is a petition taken from the action of the examiner of trade-marks refusing to register the word "Ca-tal-gine" as a trade-mark for a medical compound. The refusal of the examiner is based upon the record in the patent to Vis, No. 512,590, for an orthooxyethyl-alpha-benzoylamido-quinolin. In the application which eventuated in the grant of the patent referred to, the compound was called by the applicant "Katalgen". The examiner required that this word should be erased on the ground that it was in the nature of a trade-mark, and this was done. The examiner of trade-marks states that it is common in the art to which the compound covered by the patent mentioned belongs for chemists, when they originate a new compound, to give it a name and he cites the Celluloid Manfg. Co. v. Cellonite Manfg. Co., 41 O.G., 695. He therefore holds that the patentee Vis originated the name "Katalgen" and that "Vis or his assignee is entitled to the exclusive use of the word" * * * "until said applicant shall have shown to he has come into the ownership of the name from Vis * *". Of course the word "Ca-tal-gine" is so similar to the word "Katalgen" as to cause confusion in the mind of the ordinary purchasers.

Petition.

Trade-Mark for "Natural Tobacco."

Decided Feb. 1, 1898.

C. C. Taylor for applicants.

This is a petition taking from the action of the Examiner-in-Chief refusing to register the word "Natural-Leaf" as a trade-mark for a tobacco product. The refusal of the Examiner is based upon the record in the matter of Via, No. 24,[illegible], for registration-right-to-manufacture-certificate. In the application Via's predecessors in the grant of the patent claimed so, the combined was called by the applicant "Natural". The Examiner reiterated that the word is descriptive, and this was done. The question is the matter of a trade-mark, and this was done. The question of [illegible] is common to the art to mark the commodity covered by the [illegible] relating for cigarettes, when under existing a new language, to [illegible] and in cities we [illegible] Manfg. Co. v. Goldonte Manfg. Co., 42 O.G., 893. We [illegible] that the petitioner [illegible] the word "Natural-Leaf" and that "via de [illegible] is [illegible] in the exclusive use of the word "Natural" [illegible] said applicant [illegible] to [illegible] [illegible] [illegible]

The patentee Vis so far as I am aware has not filed an application for a trade-mark for the word in question. There is nothing in the record to show that said patentee is now or ever was engaged in the manufacture or sale of the compound for which he obtained the patent above referred to. Moreover, there is nothing in the record to show that the word in question is well-known or that it is usually applied to the particular compound described in the Vis patent.

It seems to me that these facts show that the present case does not come within the doctrine set forth in the decision cited.

The decision of the examiner of trade-marks is reversed.

S.T.Fisher,

Assistant Commissioner.

December 3, 1896.

January 12, 1897. S.F.T.

U.S.Patent Office.

Ex parte Alfred J. Cammeyer.

Trade-Mark for Boots and Shoes.

Petition.

Application for registration filed September 12, 1896, No. 52,104.

Mr. Clifford Boese for applicant.

This is a petition from the action of the examiner of trade-marks refusing to register the compound word "Armor-Clad" as a trade-mark for leather shoes.

The record shows that the words "Iron Clad" have been used as applied to the manufacture of rubber boots and shoes and also to the manufacture of leather boots. The merchandise in these cases is so nearly like that which applicant seeks protection for that unless some substantial difference in the trade-marks themselves exists, registration must be refused. Upon consideration I am constrained to believe that the idea conveyed to the mind of the ordinary person by the word which applicant is seeking to have registered is substantially that conveyed by the words used in the references, and that if registration were permitted to the word "Armor-Clad", confusion would be liable to result.

The decision of the examiner of trade-marks is affirmed.

S.T.Fisher,

Assistant Commissioner.

January 26, 1897.

U.S.P.Trade Office.

In re: Alfred C. Thompson.

Trade-Mark for "Iron Clad".

Petition.

Petition for registration filed September 12, 1917.

Claimed Used for Applicant.

This is a petition from the action of the Examiner of Trade-Marks refusing to register the combination word "Iron-Clad" as a trade-mark for leather boots.

The words "Iron Clad" have been used as applied to the manufacture of rubber boots and shoes and also to the manufacture of leather boots. The merchandise in these cases is so nearly like that which applicant seeks to register for that purpose, registration must be refused. Upon consideration I am constrained to believe that the law governing the registration of trade-marks is very imperfect in that it permits words which signify little if anything to be registered as exclusively that employed by different users in the same line of business, and that if registration were granted to the word "Iron-Clad", competitors would be likely to profit.

The decision of the Examiner of Trade-Marks is affirmed.

E.T.Fisher,

Assistant Commissioner.

September 15, 1917.

December 31, 1896.

U. S. Patent Office.

S.E.F.

Ex parte Arkell & Smith.

Trade-mark for Flour.

Recorded Vol. 60, p.421.

Petition. S.T.Fisher.

Application for registration filed May 14, 1895, No. 49,157.

Mr. Edw. S. Underwood for applicants.

These petitioners filed an application for the registration of the trade-mark "Electric Light" as applied to flour. Subsequently, and after a declaration of interference, they sought to change the merchandise to which the trade-mark is to be applied to receptacles for flour. The testimony taken during the interference shows that these applicants manufacture receptacles only. They have an apparent right to the use of these words upon sacks as such in order to indicate the origin of such sacks. They have no right under the statute to apply these words to their sacks in any way so as to mislead a purchaser into the belief that the flour contained in the sack marked is "Electric Light" flour. The office is not warranted in lending its aid or sanction to the registration of anything which may be productive of deception or may possibly be fraudulent. If the applicants were to apply their trade-mark to the sacks or receptacles in such a manner as to avoid this objection and were to show to the office that such was their intention, and were furthermore to show the office that they had complied with the statute in reference to foreign commerce or commerce with the Indian tribes, it may be that favorable consideration might

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be given them. Under the circumstances, however, I think that the action of the examiner was correct.

The decision of the examiner of trade-marks is affirmed.

S.T.Fisher,

Assistant Commissioner.

January 28, 1897.

Sept. 16, 1896.
No. 19,004.

U S. Patent Office.

Recorded Vol. [illegible], p.69.

Kramme v. Lockwood.

Trade-Mark for Medical Compounds.

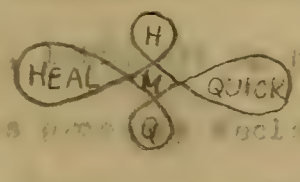
Appeal from Examiner of Trade-Marks.

Application of Ferdinand Kramme filed February 6, 1896, No. 50,[illegible]22.
Trade-Mark of Frederick J. Lockwood registered December 6, 1892, No. 2[illegible],122.

Messrs. C. A. Snow & Co. for Kramme.
Mr. A. [illegible] for Lockwood.

This is an appeal by Kramme from the decision of the examiner of trade-marks refusing the motion to dissolve the interference on the ground that no interference in fact exists between the trade-marks of the respective parties.

The fac-simile of appellant's mark shows a scroll and words and letters arranged as shown in the cut:



The appellant states that the essential features of this mark is "the expression 'Heal M. Quick,' and the letters H and Q arranged respectively at opposite sides of and in alignment with the letter M." The prominent feature of this mark, however, is the words "Heal Quick" and these words must be taken as the essential features. (See Metropolitan Watch Co., 41 MS. Dec., 426.)

The appellant was put in interference with the mark "Quick-

heal," previously registered to Lockwood. It seems clear to me that the prominent feature of the appellant's mark so nearly resembles the mark of the registrant as to cause confusion, and therefore the interference was properly declared. (See Kirby v. McLaughlin & Co., v. Johnston, 57 MS.Dec. 361; Lown v. Ohio Coffee Co., 73 O.G., 1136; ex parte Blanton Milling Co., 57 MS.Dec.,372; and ex parte N.Y. Powder Co., 59 MS.Dec., 142.)

While the above ground for dissolution was the only one raised in the motion, appellant now contends that the interference was improperly declared, because the date set up in his declaration, July 1, 1892, does not overcome the date of October 1, 1889, in the declaration of the registrant, and until he overcomes this date of the registrant the interference should not have been declared. The prima facie date of the registrant, as is well settled, is the date of his application, November 5, 1892, and as this is subsequent to the date, July 1, 1892, set up by the appellant's declaration, the interference was properly declared.

The decision of the examiner is affirmed.

S. T. Fisher,

Acting Commissioner.

September 28, 1896.

Intf. No. 18,016.
February 16, 1897.

S.F.T.

U. S. Patent Office.

The John C. Roth Packing Co. v. Agostini.

Recorded Vol. 60, p. 46.

Trade-Mark for Lard.

Appeal from the Examiner of Interferences.

S. T. Fisher,
Assistant Commissioner.

Application for registration of The John C. Roth Packing Co. filed July 17, 1893, No. 44,844.

Trade-Mark of Joseph Agostini registered October 25, 1883, No. 10,6[illegible]. February 17, 1897.

Mr. Geo. J. Murray for The John C. Roth Packing Co.
Messrs. Munn & Co. for Agostini.

This is an appeal from the decision of the examiner of interferences adjudicating priority in favor of Agostini, who registered a trade-mark October 23, 1883, for the representation of a dove applied to receptacles containing lard. The decision of the examiner of interferences is to the effect that while The John C. Roth Packing Co. proved that it had used the representation of a dove upon packages containing beef and hams, it had not proved that it had used said mark upon packages containing lard. Huschart testifies, see page 3 of the record of The John C. Roth Packing Co., "x x the company x x beginning early in 1872 adopted the Dove Brand as a trade-mark for all their standard goods, including lard." This company has offered in evidence labels wherein the same trade-mark for use upon packages containing hams and beef is shown and has proved the use of such labels since 1871. Agostini has not contested the interference in any way, which fact raises a suspicion that he has abandoned his trade-mark. It is true that the showing

Appeal No. 12,312.

Ex parte [illegible].

U. S. Patent Office.

The John O. Roth Packing Co. v. Murray. Vol. [illegible]

Trade-mark Not Used.

Appeal from the Examiner of Interference.

Application for registration of The John O. Roth Packing Co. [illegible]
July 17, 1893, No. 44,844.

Trade-mark of Tobin Asbestos Sheathing Co., Limd., No. [illegible]

Mr. Leo. J. Murray for The John O. Roth Packing Co.
Messrs. Munn & Co. for Appellant.

This is an appeal from the decision of the examiner of interferences adjudicating priority in favor of Appellant, who registered a trade-mark October 20, 1903, for the [illegible] stated to resist acids and burning lard. The decision of the [illegible] of interference is to the effect that while The John O. Roth Packing Co. proved that it had used the designation of a cone [illegible] packages containing lard, it had not proved that it used it to mark upon packages containing lard. Appellant testified, see page 3 of the record of The John O. Roth Packing Co., "x x the original x x packing early in 1893 adopted the cone [illegible] a trade-mark for all their standard goods, including lard." This testimony has offered in evidence labels wherein the name trade-mark [illegible] as upon packages containing [illegible] and dealt in above was [illegible] proved the use of such labels since 1893. Appellant [illegible] - tended the interference in any way, [illegible] that he has abandoned his trade-mark. It is true that the [illegible]

of The John C. Roth Packing Co. is not a very good one, but it is superior to that of Agostini.

The decision of the examiner of Interferences is reversed and priority adjudicated in favor of The John C. Roth Packing Co.,

S. T. Fisher,

Assistant Commissioner.

February 17, 1897.

February 17, 1897.

U. S. Patent Office.

Ex parte Merrell-Soule Company.

Trade-Mark for Condensed Mince Meat.

Petition.

Recorded Vol. 61, page 72.

Application filed April 29, 1896, No. 51,342.

Messrs. Dey & Parsons and Mr. J.R. Nottingham for applicant.

The appellant represents that it has adopted a trade-mark consisting of the arbitrary words "New England," which it applies to meat packed as shelf goods, and that the particular description of goods upon which it is used is condensed mince meat. Registration was refused by the examiner of trade-marks under doctrine announced by the Commissioner in the case of William Ladt Baking Co., 53 MS.Dec., 139, in which the words "New England" refused as a trade mark for crackers, biscuits and wafers, and the authority of the decision in Columbia Mill Co. v. Alcorn, U.S., 460.

It appears that this brand of condensed mince meat has been on market for a number of years and has had a great sale; that in the past two years the Merrell-Soule Company purchased of Weatherby, the former owner, the good will and trade name and New England mince meat, paying therefor fifty thousand dollars; that afterward a suit was instituted in the courts of Illinois at Chicago, against one F.F. Rice for an alleged infringement the trade-mark "New England Condensed Mince Meat," and the court issued a preliminary injunction, restraining defendant from using

the same; that upon motion by the defendant Rice to vacate the injunction a hearing was had and the court denied the motion to vacate. It is claimed on appeal that the examiner erred in not giving due weight to the long-continued and extensive use of the mark by the petitioner and to the decision of the Circuit Court in favor of registration.

I am impressed with this argument and were the question the same before me that arose before the circuit court, I should of course recognize that decision as controlling in this case. But trade mark cases in the courts generally go off on questions of fraud or unlawful competition or encroachment upon legitimate trade but in this office it is necessary to carry out the provision of Chapter 138 of the Statutes At Large, March 3, 1881, and one of the provisions of that act, in section 2, is not only that the person or corporation applying for registration must have at the time a right to the use of the trade-mark sought to registered, but also that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive.

In the case of the words "New England," they being geograph-ical within the meaning of the Columbia case, I am obliged to hold that any person living in New England and having the right to manufacture condensed mince meat, would have the right to call his manufacture "New England Condensed Mince Meat". With a disposition to apply any decision of the circuit court of Illinois in its full-

ent meaning, and notwithstanding the broad equities in this case, I am constrained to hold that while the appellant may acquire rights in the trade-mark which he carries on which cannot be encroached upon, he nevertheless, under the meaning the the federal statutes on trade-marks has not the right to have the words "New England" registered as applied to his manufactured.

The decision of the examiner of trade-marks is therefore affirmed.

John S. Seymour,

Commissioner.

March 12, 1897.

E.S.W.

U. S. Patent Office.

M. M.

Ex parte The F. Becker Brewing Company.

Recorded Vol. 61, p. 74.

Trade-Mark for Lager Beer.

Petition.

Application for registration filed July 31, 1893, No. 45,134.

Mr. James J. Sheehy for applicant.

Appeal is taken from the decision of the examiner of trade-marks in refusing registration to the alleged trade-mark consisting of a red triangle bearing within it the monogram "B. B.," printed in white upon a black background, with the representation of hop leaves and barley, above and below the figure, and the words "Aged, Pure, and Popular," printed in heavy capital letters, as illustrated in the application.

Commissioner.

The mark cited in rejection shows a black triangular figure. The color is not claimed as essential by the registrant, while the applicant claims as essential the red colored triangle. It also claims as essential the monogram "B.B." and the representation of hop leaves and barley. In fine, each and every feature is claimed to be essential to the makeup of the mark asked to be registered.

It is claimed that it is unfair in the office to dissect the mark and reject it piecemeal. The refusal of the examiner is based upon the prior registration of Bass, Ratcliff & Gretton, No. 12,[illegible] dated July 25, 1882, a triangular figure used upon beer of all kinds since the year 1855.

U. S. Patent Office.

In re Trade Mark No. 46,134. Register Vol. 41. Folio 78.

Trade-Mark for Lager Beer.

Petition.

Application for registration filed July 31, 1903, No. 46,134.

Ayrel is taken from the decision of the examiner of trade-marks in refusing registration to the alleged trade-mark consisting of a red triangle having within it the numerals "3." "3," printed in white upon a black background, with the representation of hop leaves and barley, above and below the figure, and the words "Lager Beer, and Popular," printed in black capital letters, as claimed in the application.

The mark also includes a black rectangular figure...

The color is not claimed as essential by the registrant, while the ...nt claims as essential the red colored triangle. It also claims as essential the numerals "3." ... representation of hop leaves and barley. In fine, each and every feature is claimed as essential to the ... of the mark asked to be registered.

It is claimed that it is unfair in the office to dissect the ... and reject it piecemeal. The refusal of the examiner is based upon the prior registration of Bass, Ratcliff & Gretton, ... Ltd., 1898, a triangular figure used upon beer of all ... the issue of Lager Beer ...

In this I am in accord with the examiner, and while there are features that on close inspection or to the expert eye would tend to differentiate this mark from that used upon Bass ale, still to the ordinary purchaser the red triangle sought to be registered would, in my judgement, be regarded either as identical in form with the well, known Bass ale trade-mark, or in such near resemblance thereto as would be calculated to deceive.

Under section 2, therefore, of the act of March 3, 1881, the registration ought to be refused, and the decision of the examiner of trade-marks to that effect is affirmed.

John S. Seymour,

Commissioner.

March 12, 1897.

U. S. P.

March 23, 1897. S.E.T.

U. S. Patent Office.

Recorded Vol. 61, p.213.

Ex parte Felix Eydoux.

Trade-Mark for Soap.

Petition.

Application for registration filed March 18, 1896, No.52,457.

Mr. Henry Connett for applicant.

This is a petition taken from the decision of the examiner of trade-marks refusing to register the representation of an "erect human figure and the words La Vierge" as a trade-mark for soap. Substantially the same mark was refused by the then Commissioner in ex parte Eydoux, 51 MS.Dec.,500.

I see no reason for adopting a different view of the case and the decision of the examiner of trade-marks is therefore affirmed.

S. T. Fisher,

Acting Commissioner.

March 24, 1897.

U. S. Patent Office.

Ex parte Pol x Dyonox.

Trade-Mark for Soap.

Petition.

Petition for registration filed March 18, 1892. No. 7,427.

Mr. Henry Connett for petitioner.

This is a petition taken from the decision of the examiner of trade-marks refusing to register the impression of an [illegible] breast bearing figure and the words De "Long" as a trade-mark for [illegible]. Substantially the same mark was claimed by the Eden Garment Supporter in Ex parte Eden, 11 O.G. 100, 1877.

I see no reason for adopting a different view of the question from that announced in the case of Trade-Mark No. 1,000.

C. D. [illegible],

Acting Commissioner.

Washington, D. C., June [illegible], 1892.

Intf. No. 17,590. S.E.T.

U. S. Patent Office.

Kirshbaum v. Berriman. Recorded Vol. 58 p. 464.

Trade-Mark for Bicycles.

Appeal on Motion.

Application for registration of Fannie Kirshbaum filed November 21, 1895, No. 50,309.

Trade-Mark registered to Edward C. Berriman October 2, 1895, No. 27,361.

Messrs. O'Meara & Co. for Kirshbaum.
Messrs. Glascock & Co. for Berriman.

This is an appeal by Berriman from the decision of the examiner of trade-marks refusing to dissolve the above entitled interference. Berriman holds that the interference was irregularly declared inasmuch as the office did not call upon upon Kirshbaum to make oath that her mark was used in foreign commerce prior to the adoption and use of the mark of Berriman, or at least prior to Berriman's date of ~~XXX~~ filing.

The first to adopt and use a trade-mark is the owner of such mark, as is held in the decisions cited by the examiner. It is therefore immaterial whether or not Kirshbaum used her mark in foreign commerce before the filing date of Berriman's application for registration.

The decision of the examiner of trade-marks is affirmed.

S. T. Fisher,
Acting Commissioner.

March 26, 1897.

Dec. 17, 1900.

U. S. Patent Office.

Kirkbaum v. Berriman.

Case ruled Dec. 17, 1900.
Vol. 96 p. 161.

Trade-Mark for Bicycles.

Appeal on Motion.

Application for registration of Trade Kirkbaum filed November 21, 1899, No. 50,309.

Trade-Mark registered to E Ward C. Berriman October 2, 1900, No. 37,961.

Messrs. Williams & Co. for Kirkbaum.
Messrs. Glascock & Co. for Berriman.

This is an appeal by Berriman from the decision of the examiner of trade-marks refusing to dissolve the above entitled interference. Examiner holds that the interference was properly declared inasmuch as the office did not call upon Kirkbaum to make oath that her mark was used in foreign commerce prior to the adoption and use of the mark of Berriman, or at least prior to Berriman's date of XXXX filing.

The right to adopt and use a trade-mark is the owner of such mark, as is held in the decisions cited by the examiner. It is therefore immaterial whether or not Kirkbaum used her mark in foreign commerce before the filing date of Berriman's application for registration.

The decision of the examiner of trade-marks is affirmed.

C. T. Dubois,

Acting Commissioner.

April 6, 1897.

S. E.T.

U. S. Patent Office.

Ex parte Augustus Wolf.

Recorded Vol. 61, p. 284.

Trade-Mark for Bolting Machines.

80 OG. 127

Petition.

Application for registration filed December 4, 1896, No. 52,566.

Messrs. Howson and Howson for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register the word "Gyrator" as a trade-mark for bolting machines or sieves.

The examiner holds that---

"When a noun is formed in the ordinary way by adding the suffix 'or' to the verb, or when a word is formed by combining two known words, and the meaning of such newly formed word is readily apparent and descriptive of the article to which it is applied, it should not be registered as a trade-mark."

The applicant submits a list of words, some of them apparently descriptive, which have been registered. He contends that since the word "Gyrator" is not found in any dictionary, he has coined a new word which he should be allowed to register.

It seems to me that the word in question is descriptive and the decision of the examiner of trade-marks is affirmed.

S. T. Fisher,
Acting Commissioner,
now Assistant Commissioner.

April 15, 1897.

Trade-mark for polishing machines.

Petition.

Petition for registration filed June 4, 1906. No. 9,999.

Petition of [illegible].

Petition of the Examiner of trade-marks refusing to register the word "Operator" as a trade-mark for polishing machines or pieces.

The examiner holds that--

"When a noun is found in the primary way by adding the suffix 'or' to the verb, or when a word is formed by combining two known words, and the meaning of such [illegible] applied, it should be registered as a trade-mark."

The applied submits a list of words, some of which [illegible] descriptive, which have been registered. He contends that since the word operator is not found in any dictionary, he is entitled a new word which he should be allowed to register.

It seems to me that the question is governed by the decision of the examiner of trade-marks is affirmed.

S.T. Fisher,
Acting Commissioner.

Intf. No. 17,917.
March 31, 1897.

S. F. T.

U. S. Patent Office.

Hutton v. Stentz. Vol. 61, p. 282.

Trade-Mark for Medicine.

!!!!!!

Appeal.

Application of Willis A. Hutton for registration filed April 30, 1896, No. 51,5 9.
Application of Daniel Stentz for registration filed April 17, 1896, No. 51,229.

Mr. Carl D. Stephan for Hutton.
Mr. Willard G. Stanton for Stentz.

This is an appeal by Hutton from the decision of the examiner of interferences adjudicating in favor of Stentz priority of adoption and right to the trade-mark Veg-e-tone.

This name is used to designate a medical compound used apparently as a cathartic and cure for rheumatism and each of the parties claims the sole right to use the trade-mark.

The evidence was very carefully reviewed by the examiner of interferences and while he noted many omissions and much immaterial matter in the testimony of both parties, he arrived at the conclusion that Hutton had not shown a case sufficient to divest Stentz of the exclusive possession of the mark by showing that he did in fact have such an interest in the Veg-e-tone company as to give him a right to use the mark.

The appellant contends that the trade-mark was first used commercially when Hutton and Stentz jointly engaged in the sale of this medicine, January 18, 1895; that it was used in that

Int. No. IV,347.
Decision of, 1897.

B. E. T.

U. S. Patent Office.

Hatton v. Counts. Vol. 81, p. 282.

Trade-Mark for Medicine.

!!!!!!

Appeal.

Affirmation of Willis A. Hatton to registration filed April 20, 1896, No. 22,212.

Application of Hatton for registration filed April 6, 1896, No. 21,230.

Cert. : Registered for Patent.
Will. : Counsel for Counts.

This is an appeal by Patton from the decision of the Examiner of Interferences adjudging in favor of Counts priority of invention and right to the trade-mark hereinafter.

Both parties used to designate a medical compound resulting as a catholic and tonic for rheumatism and each of the parties claims the sole right to use the trade-mark.

The priority was very carefully weighed by the Examiner of Interferences and will be noted many citations and much interesting matter in the testimony of both parties, We entirely at the termination that Patton had no show a title sufficient to divest Counts of the exclusive possession of the mark by showing that he or it had been at an interest in the use-a mark regarding it to him a right to use the mark.

The applicant contends that the trade-mark was first commercially than Hatton and Counts jointly entered in the spring, January 10, 1895; that in was lax in not

business until they separated February 29, 1896; and that Hutton furnished the money for the business. He says:

> "If Hutton was the sole proprietor, as he says he was, then the right became vested in him and is in him now. If Hutton and Stentz were joint proprietors then the right remained in both of them when they separated unless one alone succeeded to the business."

As pointed out by the examiner of interferences, the evidence is not satisfactory. If, as Hutton contends, he alone constituted the company which did business under the name "Veg-e-tone Company", the right to the mark was his and in the absence of any showing that he has since parted with it, is still his. If, as Stentz contends, there was a partnership of some sort, the mark belonged to the company and at the dissolution of the partnership may have been acquired by some one, but, if so, by whom does not appear.

In fact the office is not materially better able to judge the rights of the parties than if no testimony had been taken, inasmuch as the testimony in the case is not directed to the point to be decided.

Under the circumstances there is no course left but to adjudicate priority in favor of the senior applicant for registry.

The decision of the examiner of interferences adjudicating priority in favor of Stentz is affirmed.

S. T. Fisher,

Acting Commissioner,
now Assistant Commissioner.

April 15, 1897.

business until they separated February 29, 1896; and that Hutton
furnished the money for the business. He says:

"If Hutton was the sole proprietor, as he says he was, and the
profits were his and his alone, If Hutton and
Peters were joint proprietors then the profits in both
of them were jointly possessed which alone belonged to the
partners."

As pointed out by the examiner of interference, the
evidence is not satisfactory. If, in fact, as Hutton contends, he alone
furnished the money with which the business and the name "Pioneer
Company", the right to the mark was his and in the absence of any
showing that he had since parted with it, it still is. If, on
the contrary, there was a partnership of some sort, the mark
belongs to the company and at the dissolution of the partnership
may have been assigned by one, but, if so, by what does no
appear.

In fact the office is not materially better able to judge
the rights of the parties than if no testimony had been taken. Al-
though in the allowance of the case is not directed to the point to
be decided.

Under the circumstances there is no course left to
adjudicate plainly in favor of the senior application.

The decision of the Examiner of Interferences adjudi-
cating priority in favor of Peters is affirmed.

E. T. Sheldon,
Acting Commissioner.

Dated July 15, 1897.

U. S. PATENT OFFICE.

LOWN v. THE OHIO COFFEE & SPICE COMPANY.

TRADE MARK FOR COFFEE.

APPEAL ON MOTION.

APPLICATION OF WM. G. LOWN FILED MAY 17, 1895.

APPLICA TION OF THE OHIO COFFEE & SPICE CO. FILED MAY 10, 1895.

MR FRANK T. BROWNING FOR LOWN.

MR FRANK G. FULLINGTON FOR THE OHIO COFFEE & SPICE CO.

This is an appeal from the decision of the examiner of tr trade-marks refusing to dissolve the above-entitled interference. The essential feature of Lown's application is said to be the word "Capitol". The essential feature of the Ohio Coffee & Spice Co. is now said to be the words "Capital Coffee" and a group of American flags at each end thereof.

It is true that the marks as shown are different, but it is also true that the "short phrase between the buyer and seller" would be substantially the same, as the difference in sound between "Capitol" and "Capital" is too small to be noticed by the ordinary purchaser.

The decision of the examiner of trade-marks is affirmed.

M.S.M. M.H.

U. S. Patent Office.

Ex parte William H. Lord. Recorded Vol. 61, p.389.

Trade-Mark for Fish.

Petition.

Application for registration filed February 27, 1897, No.53,080.

Messrs. Clarke & Raymond for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register the words "White Wrapper" as a trade-mark for canned salmon, on the ground that a wrapper of particular color alone cannot constitute a trade-mark.

This question seems to have been passed upon by the decisions of both the office and the courts. In the case of ex parte Landreth, 31 O.G., 1441, the essential feature of the mark offered for registration was a red bag in which the goods were packed for the trade.

In refusing registration it was substantially said that neither the color alone of a package nor the color of an article of commerce can constitute a trade-mark.

In the case of Fleischmann et al. v. Starkey, 25 Fed. Rep, 127, the question before the court was whether a yellow colored label was a lawful subject of a trade-mark. The court held that the color of a label, apart from a name or device, cannot be the subject of a trade-mark. To hold otherwise would be that a manufacturer might acquire the exclusive right to the use of a label of a certain color or to the colored paper in which his goods might be wrapped.

U. S. Patent Office.

Ex parte William H. Lord.

Recorded Vol. 61, p.389.

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This might seriously interfere with trade and with legitimate xompetition.

Judge Maynard, of the Court of Appeals of New York, also had this question before him in the case of Fisher et al. v. Blank, 33 N.E. Rep., 1040, where the plaintiffs claimed exclusive use in their business of the term "Black Package Tea." The court held that manifestly the term had reference either to the quality of the article or the color of the package in which the tea was sold, and in either case the term could not be made the subject of individual appropriation. If the adoption of a package of a particular color cannot confer any proprietary right to its use, it is difficult to see how the assumption of a name which is simply descriptive of the color of the package can be lawfully protected from use by others.

Without reviewing the other authorities to which attention has been called, it is sufficient to say that it seems to me that a person cannot lawfully claim exclusive use of the color of the package in which his goods are enclosed, and as other parties may enclose their canned salmon in white wrappers or packages, the term would simply indicate to the purchaser the color of the wrapper. Under these circumstances, the term "White Wrapper" is not a valid trade-mark.

The decision of the examiner of trade-marks in refusing registration is affirmed.

Benj. Butterworth,

Commissioner.

June 8, 1897.

June 8, 1897.

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July 9, 1897.

S.E.T.
M.S.M.

U. S. Patent Office.

Ex parte E. R. Durkee and Co.

Recorded Vol. 62
page 14.

Trade-Mark for Starch.

Petition.

Application for registration filed April 19, 1897, No. 53,448.

Messrs. L. W. Serrell and Son for applicants.

This appeal is taken from the decision of the examiner of trade-marks refusing to register the word "Imperceptible" as a trade-mark for starch.

This trade-mark is stated to be applied to the boxes or packages in which the starch is put up for sale. It is clearly not descriptive of the starch as so put upon the market. Nor is it clear that it is descriptive of the starch as applied to fabrics, though whether it is or is not descriptive of the starch so applied need not be here decided, for the reason that the starch so applied has not only ceased to be an article of trade, but has in the process of applying it to the fabric been subjected to chemical action.

The trade-mark is registrable.

The decision of the examiner is reversed.

A.P.Greeley,

Acting Commissioner,
now Assistant Commissioner.

July 10, 1897.

S.E.T.
M.S.M.

July 9, 1897.

U. S. Patent Office.

Ex parte E. R. Durkee and Co.

Recorded Vol. 62
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Petition.

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ess of applying it to the fabric been subjected to chemical action

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The decision of the examiner is reversed.

A.P.Greeley,

Acting Commissioner,
now Assistant Commissioner.

July 10, 1897.

August 25,1897. A.R.

U. S. Patent Office.

Ex parte The George C. Gill Paper Company.

Petition.

Application for registration filed May 10, 1897, No. 53,607.

Messrs. Chapin & Co. and Mr. F. A. Lehmann for applicant.

This is an appeal from the decision of the examiner of trade-marks, refusing registration to the words " Old Yorkshire Mills", as applied to paper. The grounds of his refusal are two, first, that the expression sought to be registered has for its most prominent word a word of geographical signification, and, second, that a similar word, viz., " York Mills," has been previously registered for the same class of merchandise.

Either of these grounds seems to be sufficient to justify the examiner in refusing the registration of the words in question. The decision of the examiner of trade-marks is therefore affirmed.

A. P. Greeley

September 11, 1897. Acting Commissioner.

A.R.

August 25, 1897.

U. S. Patent Office.

Ex parte The George C. Gill Paper Company.

Petition.

Application for registration filed May 10, 1897, No. 53,807.

Messrs. Chapin & Co. and Mr. F. A. Lehmann for applicant.

This is an appeal from the decision of the examiner of trade-marks, refusing registration to the words "Old Yorkshire Mills", as applied to paper. The grounds of his refusal are two, first, that the expression sought to be registered has for its most prominent word a word of geographical signification, and, second, that a similar word, viz., "York Mills," has been previously registered for the same class of merchandise.

Either of these grounds seems to be sufficient to justify the examiner in refusing the registration of the words in question. The decision of the examiner of trade-marks is therefore affirmed.

A. P. Greeley

Acting Commissioner.

September 11, 1897.

July 2, 1897.

S.E.T.
M.S.M.

U. S. Patent Office.

Ex parte Christine Saumert.

Recorded Vol. p.15.

Trade-Mark for Cheese.

Petition.

Application for registration filed November 13, 1895, No. 50,245.

Mr. Chas. C. Gill for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register the representation of a crown or h the word "Crown" as a trade-mark for a certain class of cheese.

The reference upon which registration is refused is the trade-mark of J.W. Hodgson, No. 5,189, registered October 2,1877, which shows and claims as the essential feature a garter in an oval form with a crown in the upper or center portion.

The ground upon which this action was based is that the salient feature of the registered mark is the crown and that the cheese to which this mark is applied would probably be known to the ordinary class of purchasers as "crown" or "crown brand" cheese and that therefore cheese bearing the applicant's mark would be mistaken for that of the registrant.

The applicant strenously denies this and contends that the registrant's cheese would be known as the "garter" cheese or the "Hodgson" cheese, since she holds that the garter is the salient feature of the trade-mark.

U. S. Patent Office.

Ex parte Printing Lamont. Journal Vol. 4
p.15.

Trade-Mark for Cheese.

Petition.

Application for registration filed November 19, 1898, No. 20,345.

Mr. Chas. C. Gill for applicant.

This is an appeal from the decision of the examiner of trade-marks refusing to register the representation of a cow or b the word "cows" as a trade-mark for certain class of cheese.

The reference upon which registration is refused is the rade-mark of J.". Indexed, No. 8,178, registered October 31,1871, ich shows and claims as the essential feature a marker in an oval m with a cow in the upper or center portion.

The ground upon which this action was based is that the ficant feature of the registered mark is the cow and that the pose to which this mark is applied would probably be known to the rchasing class of purchasers as "cows" or "cows brand" cheese and that therefore there exists between the applicant's mark would be mista- n for that of the registrant.

The applicant at once[illegible] denies this and contends that e registrant's cheese would be known as the "cow" cheese or e "Indiana" cheese, since she holds that the picture in the Bab- t Trade-mark.

The crown in the registered trade-mark is quite prominent and I agree with the examiner that it is the feature which would attract the attention of the ordinary purchaser, and that this mark might readily be confused with that of the applicant and therefore the examiner properly refused to register the applicant's trade-mark.

The decision of the examiner of trade-marks is affirmed.

A.P. Greeley,

Assistant Commissioner.

July 12, 1897.

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and I agree with the examiner that it is the feature which would

attract the attention of the ordinary purchaser, and that this mark

might readily be confused with that of the applicant and therefore

the examiner properly refused to register the applicant's trade-

mark.

The decision of the examiner of trade-marks is affirmed.

Recorded Vol. 61 P. 336.

May 5,1897.

U. S. Patent Office.

Xavier de Bejarry

Trade Mark for Velocipedes.

Application filed Aug. 21,1897.

Henry Connett Attorney.

The present applicant being a citizen of a foreign country and declining to name commerce with a particular foreign nation or Indian tribe; his petition was denied, by the Commissioner "The oath does not comply with section 2 of the Trade Mark law"

S. G. Fisher, Ass't. Commissioner.

Incomplete Application,

Ser. No. 54161

Exparte Bouillot 61 M. S. D. 335.

Applicant was a citizen of France. His oath failed to state that his mark was used in commerce between the U. S. and any foreign nation or Indian tribe. Applicant contended that the mark should nevertheless be registered since France was within the provision of a treaty" (Sec. 3. Trade Mark Statute) Petition denied and new Oath required.

S. T. Fisher,

Asst. Commissioner.

Jan 14. 53773

Ex parte Bouillot 61 M. S. D. 335.

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S. T. Fisher.

Asst. Commissioner.

August 6, 1907. A.R.

U. S. Patent Office.

Ex parte The Peerless Carbon Black Company, Limited.

Petition.

Application for registration filed May 16, 1907, No. 37,716.

Messrs. E. K. Doolittle & Son for applicant.

This is an appeal from the decision of the examiner of Trade-marks refusing to register the word "Peerless" as a trade-mark for carbon black. The refusal is on the ground that no one has a right to monopolize as a trade-mark a word descriptive of the goods to which it is applied.

The word "Peerless" is defined by the dictionary as "Unequalled, matchless, unparalleled, unsurpassed;" "Peerless" black, therefore, means a black of superior quality, a matchless black, a supreme superlative black, a black better than any other black. These adjectives are not fanciful words, but are words which when used as trade-marks are obviously meaningless to ordinary people. The word "Peerless" is such a word as is ordinarily used by merchants in a laudatory sense to extol their goods. If appellant's black is of a superior quality it is proper to so state. Any person, however, who thinks his black is superlative or unsurpassed or peerless has as much right as appel-

U. S. Patent Office.

Ex Parte The Peerless Carbon Black Company, Limited.

Petition.

Application for registration filed May 10, 1907, No. 50,040.

Isaacs, K. K. Position - Ron for applicant.

This is an appeal from the decision of the Examiner refusing to register the word "Peerless" as a trade-mark for carbon black. The refusal is on the ground that no one has a right to monopolize as a trade-mark a word descriptive of the goods to which it is applied.

The word "Peerless" is defined in the Standard Dictionary as "unequaled, matchless, incomparable," etc. Webster defines, "peer" = "one of equal rank, dignity, or quality," and "peerless" = "having no equal, matchless, unrivaled." Other definitions are practically the same. The word "Peerless" is not a word as to ordinarily used to describe the goods to which applicant proposes to apply it. If applicant's black is of superior quality it is proper to so state. Any person, however, who thinks his black is superlative or unsurpassed or peerless has as much right as appli-

lant to so designate his goods. To give to one person the exclusive right to such a word as a trade-mark would be to deprive the public of its lawful use in language.

This word falls within the class of words, such as "incomparable", "sterling," "standard", "wonderful," "superior," "most excellent," "famous," "splendid," "unrivaled," &c., which have been properly refused registration. This word "Peerless". in fact, has also been refused registration, Ex parte Butler, 54 MS. Dec., 130, on the ground that it is a word in common use describing quality. Any word which is descriptive of the quality of the goods to which it is applied should not be registered in this office as a trade-mark for such goods.

To appellant's argument that it had been the practice of the office prior to the Butler decision to register the word peerless, and that it is still the practice of the office to register equivalent words, it may be said that because an error is committed in registration, it is not to be followed as a precedent. I have carefully considered the authorities cited by the appellant, but for the resons atated here I consider that the word "Peerless" is not a valid trade-mark and should not be registered.

The dicision of the examiner of trade-marks is affirmed.

Benj. Butterworth.

October 1, 1897. Commissioner.

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Benj. Butterworth.

Commissioner.

r 1, 1897.

U.S.Patent Office.

S. Hornsheim, Bros. & Co., Ltd., v. J. H. Hargrave & Son.

Trade-Mark for Leaf Tobacco, &c.

Appeal from Examiner of Interferences.

81 O.G. 50

Application of Hornsheim, Bros. & Co. filed June 18, 1886, No. 31,[illegible]. Trade-Mark of J. H. Hargrave & Son registered May 1, 1883, No. 15,405.

Messrs. Briesen & Knauth for Hornsheim, Bros. & Co.
Mr. [illegible] Miss Carnett for Hargrave & Son.

This is an appeal from the decisions of the examiner of interferences, rendered March 18, 1897, April 27, 1897, and June 2, 1897.

On June 18, 1886, Hornsheim, Bros. & Co., the junior parties to this interference, filed an application for the registration as a trade-mark for leaf tobacco, manufactured tobacco, and cigars, of the words "Black Horse," or the representation of a black horse. Registration was refused on the registered mark to Hargrave & Son, which consisted of the words "Dark Horse," and the pictorial representation of a blanketed horse.

After due proceedings this interference was declared between the two parties, the issue being-

"The words 'Dark (or Black) Horse' and the picture of a horse applied to chewing tobacco."

Testimony was duly taken in behalf of Hornsheim, Bros. & Co., there being no appearance for Hargrave & Son, nor did Hargrave & Son take any testimony in their own behalf.

Recorded Vol. [illegible] Page [illegible].

U.S. Patent Office.

S. Hornbein, Bros. & Co., Ltd., v. J. M. [illegible] & Son.

Trade-Mark for Leaf Tobacco, &c.

Appeal from Examiner of Interf[illegible]s.

Application of Hornbein, Bros. & Co. Filed June 12, 1[illegible], [illegible]. [illegible].

[illegible] v. [illegible]. Application to Register Same, [illegible], [illegible], &c.

[illegible]. Citizen & Patent for Hornbein, Bros. & Co.

Wise, Stimpson & Mann for Marquand & Son.

This is an appeal from the decision of the examiner of interferences, rendered March 15, 1897, Appeal No. [illegible], Serial No. [illegible], filed [illegible].

On June 12, 1896, Hornbein, Bros. & Co., the junior parties in interference, filed an application for the registration as a trade-mark for leaf tobacco, manufactured tobacco, and cheroots, of the "Black Horse," or the representation of a black horse. The application was refused on the registered mark to Marquand & Son, which consisted of the words "Dark Horse," and the [illegible] represented a [illegible] horse.

After the proceedings in the [illegible] Patent Office [illegible] portion, the [illegible] Commissioner said:

"The words 'Dark (or Black) Horse' and the picture of a horse applied to smoking tobacco."

Testimony was duly taken in behalf of [illegible], [illegible], and [illegible] to appearance for Marquand & Son, but all [illegible] their position in their own behalf.

On March 18, 1897, the examiner of interferences rendered a decision as follows;

"The record of Hornsheim, Bros. & Co., Limited, the junior party, would seem to disclose that 'Black Horse' has been used by said junior party and their predecessors in business as a trade-mark for tobacco for about a quarter of a century; but there is not a word of testimony to show that they ever sold an ounce of chewing tobacco under this trade-mark, or that they ever applied this trade-mark to a single package of this class of tobacco. The junior party has therefore entirely failed to show the adoption and use by them of the mark 'Black Horse' applied to chewing tobacco, and hence have not sustained the burden of proof resting upon them.

"Judgment of priority of adoption and right of the trade-mark in issue is hereby rendered in favor of J. H. Hargrave & Son, the senior party herein."

On March 24, 1897, Hornsheim, Bros. & Co. made a motion that the examiner of interferences suspend the interference and rehear the same, the ground for this motion being substantially that the examiner erred in holding that the failure of Hornheim, Bros. & Co. to establish by evidence that they used the trade mark as defined in the issue on chewing tobacco at a date prior to the record date of Hargrave & Son was the basis of a judgment that they were not the owner thereof, or if this holding were not erroneous, then the examiner erred in rendering a decision of adoption and use and not dissolving the interference.

On April 27, 1897, the examiner of interferences made a decision denying this motion stating that-

"All that the examiner of interferences has decided or attempted to decide was as to the ownership of this trade-mark used on the particular article of merchandise named in the issue, and in so doing he is of the opinion that he made no error. Being of that opinion, he must and hereby does refuse to disturb the decision already made, but reaffirms the same."

On March 17, 1927, the examiner of interferences rendered a decision in Interference No. [illegible], in favor of Hornstein, Ilse, & Co., Limited, the junior party, which reads in part as follows:

"The record of Hornstein, Ilse, & Co., Limited, the junior party, would seem to disclose that 'Black Horse' has been used by said junior party and their predecessors in business as a trade-mark for tobacco for about a quarter of a century; but there is not a word of testimony to show that they ever held an ounce of chewing tobacco under this trade-mark, or that they ever applied this trade-mark to a single package of this class of tobacco. The junior party has therefore entirely failed to show the adoption and use by them of the mark 'Black Horse' applied to chewing tobacco, and hence have not established the burden of proof resting upon them.

"Judgment of priority of adoption and right of the trade-mark in issue is hereby rendered in favor of J. H. Hornstein & Son, the senior party herein."

On March 24, 1927, Hornstein, Ilse, & Co. made a motion that the examiner of interferences suspend the interference and reverse the same, the ground for this motion being substantially that the examiner erred in holding that the failure of Hornstein, Ilse, & Co. to establish by evidence that they used the trade mark as defined in the [illegible] on chewing tobacco at a date prior to the [illegible] date of Hornstein & Son was the basis of a judgment that they were not the owner thereof, or if this holding were not erroneous, then the examiner erred in rendering a decision of adoption and use and not disclaiming the interference.

On April 27, 1927, the examiner of interferences made a decision denying this motion stating that-

"All that the examiner of interferences has decided or stated to decide was as to the ownership of this trade-mark upon the particular article of merchandise named in the issue, and in so doing he is of the opinion that he made no error. Being of that opinion, he must not hereby close reserve to himself the decision may make, but reaffirms the same."

On May 3, 1897, Hernsheim, Bros & Co. moved that the issue be reformed, for the "reason appearing obviously upon the record." The motion was denied by the examiner od interferences on June 2, 1897 From these decisions of the examiner of interferences this appeal is taken.

That the issue of this interference is narrower than the claim of Hernsheim, Bros. & Co., which is placed under this issue, is plain from the record. It has been repeatedly held in patent cases that a broad claim should not be put under a narrow issue, and I think that practice should apply in interferences between trade-marks When it became apparent to the examiner of interferences that the issue was not properly drawn to include Hernsheim, Bros. & Co.'s claims, and a proper motion was made to reform the issue, it seems to me that he should have transmitted the motion to the examiner of trade-marks to be determined.

It will serve no satisfactory purpose to prolong this discussion; suffice to say, that the action of the examiner of trade-marks in drawing the issue as he did, and the action of the examiner of interferences in refusing to grant the motion to transmit the interference for the purpose offrecasting the issue, were erroneous.

The decision of the examiner of interferences awarding priority is set aside, and the interference papers will be transmitted to the primary examiner, who will reform the issue and return the papers to the examiner of interferences for the purpose of considering the question of priority on the new issue.

Benj. Butterworth.
Commissioner.

October 2, 1897.

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on of priority on the new issue.

Benj. Butterworth.

Commissioner.

r 3, 1897.

August 5, 1897. Recorded Vol. 62. P. 290.

U. S. Patent Office.

Ex parte The Yale & Towne Manufacturing Company.

Trade-Mark for Locks and Builders' Hardware.

Petition.

81 O.G. 801

pplication filed December 21, 1896. No. 52,089.

ssrs. Knight Brothers for applicant.

ited States as

This is an appeal from the decision of the examiner of trade-rks, refusing to register the word "Yale" as a trade mark for locks. gistration is refused on the ground that the word is public property, ing descriptive of a lock of a certain kind.

The records of this office show that more than forty years o one Linus Yale obtained several patents on locks. Those patents e No. 5,650, granted June 13, 1844; No. 6,111, February 13, 1849; . 10,144, October 18, 1853; No. 10,684, February 28, 1854; No. ,952, May 22, 1855. In 1861 Linus Yale, Jr., improved these locks d obtained patent No. 31,278. Norman and Taylor recognized this yle of lock as the Yale lock, and so stated in their patent No. 3,295, of April 4, 1871. They say of their invention;

" The nature of the invention is such as to make it applicable to many kinds and forms of locks, although in the accompanying drawing it is shown as applied to the well-known Yale pin lock. The construction of the Yale pin lock being well known a brief description of it here will be sufficient."

Other inventors also recognize and call this lock the Yale

A. E.

...rust 5, 1897. Recorded Vol. 62, P. 200.

U. S. Patent Office.

In re: The Yale & Towne Manufacturing Company.

Trade-Mark for Locks and Builders' Hardware.

Petition.

...lication filed December 21, 1896. No. 52,089.

...ore. Knight's Trademark for applicant.

This is an appeal from the decision of the examiner of trade-...
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Other inventors also recognize and call their locks Yale

lock. The Taylor patent, No. 334,213, of November 9, 1880, states that the object of the invention-

> "is to form, in a cheap and simple manner, a key hub or cylinder with an angular, curved, or sinuous slot, such as is used in connection with a longitudinally grooved or corrugated sheet-metal key, having side bits or serrations like the well known "security" Yale-lock key."

Another patent to Taylor, No. 302,796, of July 29, 1884, says:

> "My object is particularly to improve the construction of what have become extensively known and are familiar to purchasers and users of locks generally in the United States as "Yale cabinet-locks.'"

Syroka, in his patent, No. 421,205, of February 11, 1890, speaking of his invention says:

> "This invention relates to locks of the 'Yale' pattern, in which the latch or bolt is operated by a rotary barrel, which is normally locked against movement by tumbler-pins, and can be turned only when said tumbler-pins are operated by an appropriate key."

Still further showing that the term "Yale" as applied to a lock has been long recognized as describing a lock of a certain definite construction, reference may be made to Volume 14, Encyclo. Brit., 9th Ed., where, on page 751, there is illustrated by Figure 25 a pin tumbler lock which is termed the "Yale lock". On page 553 of Knights Mechanical Dictionary, Supplement, a pin tumbler lock is also shown and it is termed a "Yale lock". On page 554 of the same publication appears a list of locks of different classes or kinds, "Yale lock" being in this list as a lock of a specific and well-known class. The different dictionaries also refer to the term "Yale lock" as descriptive of a certain kind of lock. The Century Dictionary says:

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Another patent to Taylor, No. 302,790, of July 29, 1884,

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"My object is particularly to improve the construction of
what have become extensively known and are familiar to mechanics
and users of locks generally in the United States as "Yale combi-
nation-locks."

Sperle, in his patent, No. 441,705, of February 11, 1890,

reading of the invention says:

"This invention relates to locks of the 'Yale' pattern, in
which the latch or bolt is operated by a rotary barrel, which is
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"Yale lock, a safety-lock in which is used, in place of wards , a special form of pin tumbler admitting of a great variety of combinations, so that the chance of opening the lock except with the right key is rendered very small. The key is flat or corrugated in longitudinal lines, and the key opening in the lock is very small, to guard against the use of false keys or the blowing in of powder for exploding the lock."

The Standard Dictionary says:

"Yale lock, a tumbler-lock having a flat key with an undulating edge, unlocked by pressing spring pin tumblers to such distances as to permit rotation of the barrel of the lock by the key."

From this review of the literature of the subject I am convinced that this term or name has become well known and is descriptive of a certain class or kind of lock and cannot be appropriated by any one person, even the patentee himself or his successors or assigns, to designate a lock or locks made by him or them.

Appellant, however, argues that the name "Yale" is not only applied to the pin tumbler lock invented by yale, but to other locks invented and patented by Yale and others; that the word was ever intended to designate only a peculiar form of lock is negatived by the fact that when the pin tumbler lock of Linus Yale, Jr., was put upon the market it was marked like other locks of his invention "Linus Yale, Jr., Patent," and while pin tumbler locks were being put on the market thus marked, the name "Yale" gained a reputation as a lock which did not have pin-tumblers; that so far from the name "Yale locks" being synonymous with "pin-tumbler locks", the contrary is established by the fact that Yale's first invention related entirely to bank locks which were know years before he made the pin-tumbler locks, and such

"Yale lock, a safety-lock in which is used, in place of wards, a special form of pin tumbler admitting of a great variety of combinations, so that the chance of opening the lock except with the right key is rendered very small. The key is flat or corrugated in longitudinal lines, and the key opening in the lock very small, to guard against the use of false keys or the blowing in of powder for exploding the lock."

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true, it is no reason for registering the mark, but, on the other hand, why it should notbe it is under the decisions a good reason for registered It matters not whether the locks invented and patented by the Yales were pin-tumbler locks, bank locks, or other kinds of locks, they were patented and known as Yale locks or Yale patented locks.

It is well settled by all the authorities that when an inventor obtains a patent on a device and said patented device is known by a certain name, the name becomes public property at the expiration of the patent.

The Am. & Eng. Ency. of Law, Vol. 26, page 316, says on this subject:

"Name of Patented Article after Expiration of Patent.- When a new thing is created, such as an invention, and is patented under the patent law, and goes into use to such an extent as to be given a name, either by the inventor or the public, that name is the property of the patentee during the life of the patent. But the patent law is based upon a principle which grants a monppoly of an invention to a patentee for a limited period, on condition that the inventor will disclose the whole invention, and after the expiration of the patent the public shall have the free and unrestricted use of the invention. To permit any extension of the monopoly, by protecting the name of the patented article as a trade mark after the expiration of the patent, would be a violation of this principle, and hence it is that the courts of the United States have uniformly held that where the public have acquired the right, by the expiration of the patent, to use the invention, they are equally entitled to use all names, forms, packages, labels or other indicia which have been used by the inventor during the lifetime of the patent, to indicate the identity of the patented article. This applies to the inventor's name, it being held that if the inventor himself continues to manufacture the article after the expiration of the patent, and desires to protect his own personal reputation, he must adopt a new and arbitrary trade-mark and build up his right of ownership therein exactly as if he were a stranger."

A few of the cases on this point are reviewed here. In

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the case of Wheeler & Wilson Co. v. Shakespeare, 30 L. J., Ch. 50, where an injunction was sought to restrain the use of the words "Wheeler & Wilson" as applied to sewing-machines, V. C., said:

> "It seems to me that the name 'Wheeler & Wilson' machine has come to signify the thing manufactured according to the principle of the patent. That being so, I cannot restrain anybody, after the expiration of the patent, from representing this article as being the article which was so patented. A man cannot prolong his monopoly by saying 'I have got a trade mark in the name of a thing which was the subject of the patent.'"

In the casee of Richardson, C. D., 1875, 32, application was made for the registration of the words "A. Richardson's Patent Union Leather-Splitting Machine." Registration was refused on the ground that the name having been applied to a patented article during the existence of a patent, it had become descriptive of the article and open to the use of the public on the expiration of the patent.

In the case of the Tucker Mfg. Co. v. Boyington, 9 O.G., 455, the plaintiffs were manufacturing the Tucker spring bed under an expired patent and registered a trade mark consisting of a picture of the bed, the monogram "T. M. Co.," and the words "Tucker Spring-Bed." The defendants, who were manufacturing a similar bed labeled it with the words "Tucker Spring Bed." A motion for injunction to restrain the defendants from infringing the plaitiffs' mark was refused on the ground that the right to use the name and represent the bed had become public property on the expiration of the patent, and that the mark registered by the plaintiffs had not been used by the defendants, except as to such elements as were common property.

In Cheavin v. Walker, 5 Ch. D., 854, the plaintiff who manu-

factured filters under a patent, placed thereon the words"G. Cheavin's Improved Patent Gold Medal Self-Cleaning Rapid Water Filter." The defendants manufactured on the principle of the same patent, and placed thereon the words "S. Cheavin's Patent Prize Medal Self-Cleaning Rapid Water Filter." On appeal it was held by Jessel, M. R. ;

> "You may state in so many words, or by application that the article is manufactured in accordance with a patent which has expired. But if you suggest that it is protected by an existing patent, you cannot obtain the protection of that representation as a trade mark. Protection only extends to the time allowed by the statute for the patent, and if the court were afterwards to protect the use of the word as a trade mark, it would be in fact extending the time for protection given by the statute. It is, therefore, impossible to allow a man who has once had the protection of a patent to obtain further protection by using the name of his patent as a trade mark."

In re Consolidated Fruit Jar Co. 14 O. G. , 209, registration was asked for the trade mark "Mason", as applied to fruit jars One of the reasons for refusing registration was that the name was not such a lawful trade mark, since it was the name of the inventor of a patented article, attached to that article; that while the applicant had the sole right to make and designate the article by its name until the expiration of the patent, yet he ceased to have that exclusive right at the expiration of the patent, as all makers of the article would be entitled to describe it by the appropiate descriptive name .

The latest authority on this subject is the Supreme Court case of the Singer Co. v. June Co., 1705. 75 O.G., In that case the Singer Machine Co. were manufacturing machines of the type disclosed by expired patents to Singer. The Singer Company brought suit to restrain the June Company from using on machines built by the latter the

featured filters under a patent, placed thereon the words". There it

Improved Patent Cold Medal Self-Cleaning Rapid Water Filter." The

defendants manufactured on the principle of the same patent, and

placed thereon the words "S. Cresavin's Patent Prize Medal Self-Clean-

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case of the Thum Co. v. Tune Co., 1902. In that case the

Singer Sewing Co. were manufacturers of the type of

by expired patents in use. The Thum Company

attain the same company from using or machines built by the latter the

word Singer, which the Singer Company claimed was the trade mark of said Singer Company. It was said:

"It is self-evident that on the expiration of a patent the monopoly created by it ceases to exist, and the right to make the thing formerly covered by the patent becomes public property. It is upon this condition that the patent is granted. * * * * It * follows from the cessation of the monopoly and the falling of the patented device into the domains of things public that along with the public ownership of the device there must also necessarily pass to the public the generic designation of the thing which has arisen during the monopoly, in consequence of the designation having been acquiesced in by the owner, either tacitly, by accepting the benefits of the monopoly, or expressly by his so having connected the name with the machine as to lend countenance to the resulting dedication. * * * *

The public having the right on the expiration of the patent to make the patented article and to use its generic name, to restrict this use, either by preventing its being placed upon the articles when manufactured, * * would be to admit the right and at the same time destroy it. It follows, then, that the right to use the name in every form passes to the public, pass with the dedication resulting from the ~~from the~~ expiration of the patent.

"Nor is this right governed by different principles where the name which has become generic, instead of being an arbitrary one, is the surname of the patentee or original manufacturer."

After reviewing numerous authorities in the American, English, and French cases, the court said:

The result, then, of the American, the English, and the French doctrine universally upheld is this, that where, during the life of a monopoly created by a patent, a name, whether it be arbitrary or be that of the inventor, has become, by his consent, either express or tacit, the identifying and generic name of the thing patented, this name passes to the public with the cessation of the monopoly which the patent created."

I am clear that the case at bar falls squarely within the doctrine laid down by these authorities and that the Yale Company has no more right to the term "Yale" as a trade mark for locks invented by the Yales and manufactured by appellant, wheter the well-known

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Yale pin tumbler lock or the Yale bank lock or other locks, than the
Singer Company had to the word Singer. On the other hand, any one
who makes a lock of the type disclosed by any one of the expired patent
of the Yales has a right to designate such a lock as a "Yale lock," and
it would be the proper and true name of such lock.

The decision of the examiner of trade marks is affirmed.

Benj. Butterworth,

Commissioner.

October 1, 1897.

July 20, 1897. Recorded Vol. 62, Page 375.

81 OG. 1748

United States Patent Office.

Ex parte Hampden Watch Company.

Trade-Mark for Time-Keeping Instruments.

Petition.

Application for registration filed April 8, 1897, No. 33,354.

Mr. C. R. Miller and Mr. B. G. Cowl for applicant.

This is an appeal from the decision of the examiner of trade-marks, refusing registration of the words "Menlo Park," as a trade-mark for time keeping instruments, which mark, as stated in the application, has been used at Canton, Ohio, upon time keeping instruments, and particularly watch movements, since April, 1880.

The particular ground for refusing registration as set up in the examiner's answer to the appeal, is that the words for which registration is sought have no other than a geographical meaning, and, do not, therefore, constitute a lawful trade-mark under the decisions of the court and under the practice of this office.

While it is true that Menlo Park is the name of a small town in New Jersey and is also the name of a town in San Mateo County in California, it does not appear that either of these localities is a manufacturing town. Certainly in neither of these towns is the manufacture of watch movements carried on, and while it is true that if the business of manufacturing watch movements were to be

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nufacture of watch movements carried on, and while it is true
at if the business of manufacturing watch movements were to be

established in either of these towns, those engaged in that business would have the right to put the name of the locality on the products made there, the contingency is too remote to bar the grgis tration of a trade-mark which has been in use in a purely arbitrary and fanciful sense by these applicants for over seventeen years.

While it is true that Menlo Park is a geographical term, it does not, in my opinion, stand on the same footing as the word "Columbia," commonly used to designate the United States as a whole or the word "Lackawanna," the name of a region of country in Pennsylvania, or "International," or "East Indian," all of which have been held not to be lawful trade-marks and all of which are considered or referred to in the decision of the Supreme Court in Columbia Mills v. Alcorn, 65 O. G., 1916. In all these cases the word on which suit was brought was one which was of such a nature or covered such an extent of territory that it was necessarily to be presumed that there would be those who could employ the word with equal truth and would therefore have an equal right to employ it for the purpose for which it was used by the person who brought suit.

The line is not easily drawn in all cases between those words of geographical nature which are registrable and those which are not, but where there is reasonable doubt registration should be permitted. In the present case I am clearly of opinion that the

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words sought to be registered constitute a lawful trade-mark and are registrable.

The decision of the examiner of trade-marks is reversed.

(Signed:) A. P. Greeley,

Acting Commissioner,

Now Assistant Commissioner

October 12, 1897.

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The decision of the examiner of trade-marks is reversed.

(Signed:) A. P. Greeley,

Acting Commissioner.

Now Assistant Commissioner

tober 12, 1897.

Sept. 20, 1897. Recorded Vol. 62, Page 333.

United States Patent Office.

Ex Parte Cream of Wheat Company.

Trade-Mark for Breakfast Food.

Petition.

Application for registration filed May 18, 1897, No. 53,667.

Messrs. Paul & Hawley for applicant.

This is an appeal from the decision of the examiner of trade-marks, refusing registration of the words "Cream of Wheat," as applied to breakfast food.

The examiner based his refusal upon two grounds, namely, (1) prior registration of the same words for wheat flour, and (2) that the expression sought to be registered is descriptive, in that it conveys the idea that only the best part of the wheat berry is employed. He quotes the decision of Assistant Commissioner Fisher in North Dakota Mills Co., 58 MS. Dec., 176, in which the decision of the examiner in refusing the same words for the same article was affirmed. In that case, according to the original statement, the words were also intended to be applied to flour, among other things and the then Assistant Commissioner held this fact to be significant in the consideration of the previously registered trade-mark. In the present case, the words are to be applied to "breakfast foods, such as rolled wheat, cracked wheat, etc."

Sept. 20, 1897. Recorded Vol. 62, Page 333.

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I do not think that either of the grounds taken by the examiner is sound. Breakfast food and flour are different commercial products, and the word "cream" in this connection is merely fanciful and does not imply, of necessity, the use of the best portions of the wheat berry.

The decision of the examiner of trade-marks refusing registration of the words in question is reversed.

(Signed:) A. P. Greeley,

Assistant Commissioner.

October 11, 1897.

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(Signed:) A. P. Greely,

Assistant Commissioner.

October 11, 1897.

July 13, 1897. Recorded Vol. 62, Page 329.

U. S. Patent Office.

Ex parte Frederick A. Poth.

Trade-Mark for Beer.

Petition.

Application for registration filed April 8, 1897, No. 53,356.

Mr. Hector T. Fenton and Mr. G. H. Parmelee for applicant.

This is a petition from the action of the examiner of trade-marks refusing to register the words "Tivoli Export" as a trade-mark for pale beer.

Registration was refused upon the following grounds:---

1. The matter claimed is geographically and ordinarily descriptive in character and incapable of appropriation as a trade-mark.

2. It cannot be registered in view of the registered trade-mark No. 23,870, of the Robert Porter Brewing Company for the word "Tivoli" as applied to beer.

The examiner holds that the word "Export" is purely descriptive and he is clearly correct, since the authorities cited by him in support of his holding leave no doubt as to the matter.

The trade-mark "Tivoli" of the Robert Portner Brewing Co. was intended foe use on beer which is to be exported and the applicant's trade-mark differs from that of the registrant only in add-

U. S. Patent Office.

Ex parte Frederick A. Poth.

Trade-Mark for Beer.

Petition.

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lication for registration filed April 8, 1897, No. 53,536.

Hector T. Penton and Mr. G. H. Parmelee for applicant.

This is a petition from the action of the examiner of trade-
refusing to register the words "Tivoli Export" as a trade-
for pale beer.

Registration was refused upon the following grounds:---

1. The matter claimed is geographically and ordinarily descriptive in character and inappropriation as a -mark.

2. It cannot be registered in view of the registered trade- No. 23,870, of the Robert Porter Brewing Company for the word oli" as applied to beer.

The examiner holds that the word "Export" is purely descrip- and he is clearly correct, since the authorities cited by him pport of his holding leave no doubt as to the matter.

The trade-mark "Tivoli" of the Robert Porter Brewing Co. was ned for use on beer which is to be exported and the ap- li- 's trade-mark differs from that of the registrant only in add-

ing thereto the descriptive word "Export", which means only that it is beer possessing certain peculiarities adapting it to export trade. The beer of the registrant being intended for exportation might naturally and properly be called "Tivoli Export Beer", and therefore the trade-marks clearly interfere, the only part, if any, in either trade-mark constituting trade-mark matter being the word "Tivoli".

The examiner also holds that the word "Tivoli" is geographical in character and as a consequence cannot be registered as a trade-mark. It is unnecessary, however, to decide this question in view of the above holding that the trade-mark is not registrable for other reasons.

The decision of the examiner of trade-marks is affirmed.

(Signed:) A. P. Greeley,

Assistant Commissioner.

October 11, 1897.

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ther reasons.

The decision of the examiner of trade-marks is affirmed.

(Signed:) A. P. Greely,

Assistant Commissioner.

r 11, 1897.

Ex Parte Consolidated Rubber Works.

Trade-Mark for Rubber Tubing and Tires.

Petition.

Application for registration filed June 14, 1897, No.55,759.

Messrs. Wright, Brown & Quinby for applicant.

The applicant asks the registration of the word "Kangaroo" for rubber tubing and tires. Registration is refused by the examiner because of a prior registration of the word Kangaroo for velocipedes. The date of the prior registration is July 14,1885.

From the decision of the examiner this appeal is taken. It is urged on behalf of applicant that a registration of Kangaroo as a trade-mark for velocipedes or bicycles is no bar to the registration of the same word for rubber tubing and tires, whether the tires are used as a part of a velocipede or bicycle or not.

The applicant is clearly correct in this contention. Pneumatic tires and tubing for tires are recognized on the market as distinct articles of trade from the bicycles on which the tires may be used.

The decision of the examiner of trade-marks is reversed.

(Signed) A. P. Greeley,
Assistant Commissioner,
now Acting Commissioner.

October 30, 1897.

United States Patent Office.

In re New Prague Flouring Mill Company.

Trade-Mark for Wheat Flour.

Petition.

Application for registration filed June 1, 1904, No. 23,168.

Mr. P. K. Gunckel for applicant.

This is a petition taken from the action of the Examiner of trade marks, refusing to register as a trade mark for flour the pictorial portion of the seal of Minnesota, with the words "Seal of Minnesota."

The examiner's position is that in view of certain authorities which he cites, trade marks consisting essentially of emblems or coats-of-arms are not registrable. The trade mark has been registered in Minnesota, in which state no question of presumptive lawfulness can be registerad raised as a prerequisite to registration. This does not seem to effect the question of registration in this office.

It has been distinctly held that the coat-of-arms of the United States or of any state should be refused registration as being against public policy. (Schraubstadter Bros., 51 M. D., 104.) There is no doubt that this applies equally to the seal of a state.

Further, even if it be admitted that the seal of a state may be properly used as a mark for merchandise, it is clear that its use as such is so much a public right as to preclude the use of Minnesota or the seal of any state. The seal of a state is a symbol of exclusive appropriation than is the case of trade marks.

The decision of the Examiner of trade marks is affirmed.

A. P. Greeley,
Assistant Commissioner.

October 25, 1907.

Dec. 1, 1897. S. E. T.

United States Patent Office.

Ex parte Loring L. Cummings.

Vol. 63. p. 4

Trade-Mark for Medicines.

Petition.

Application for registration filed August 28, 1897, No. 54,211.

Messrs. Benedict and Morsell for applicant.

This is an appeal from the decision of the Examiner of Trade-Marks refusing to register the words "White Laurel" as a trade-mark for medicine. Registration is refused by the Examiner upon the ground that the medicinal properties of laurel are well known and that the words applied to medicine are descriptive in character. He says that if laurel does not occur as an ingredient of the medicine the term would be deceptive, and that the word "white" merely emphasizes the particular kind of laurel which the applicant employs.

The applicant contends that if the word laurel were used alone it might properly be held descriptive, or if the ingredient laurel were not used, deceptive, but the two words "White Laurel" taken together are wholly meaningless and could be held neither descriptive or deceptive.

As stated in the Examiner's statement, the word "white" as indicating color has been refused registration repeatedly. The words "White Laurel" would seem to indicate that the remedy in question is derived from a species of laurel. I cannot agree with the contention of the applicant that the words themselves are meaningless.

The decision of the Examiner of Trade-Marks is affirmed.

(Signed) A. P. Greeley,

Acting Commissioner.

December 3, 1897.

United States Patent Office.

Ex parte Loring L. Cummings.

Trade-Mark for Medicines.

Petition.

Application for registration filed August 28,1897, No.54,911.

Mineral. Remedial and Herbal for applicant.

This is an appeal from the decision of the Examiner of Trade-Marks refusing to register the words "White Laurel" as a trade-mark for medicine. Registration is refused by the Examiner upon the ground that the medicinal properties of laurel are well known and that the words applied to medicine are descriptive in character. He says that if laurel does not occur as an ingredient of the medicine the term would be deceptive, and that the word "white" merely emphasizes the particular kind of laurel which the applicant employs.

The applicant contends that if the word laurel were used alone it might properly be held descriptive, or if the ingredient laurel were not used, deceptive, but the two words "White Laurel" taken together are wholly meaningless and could be held neither descriptive or deceptive.

As stated in the Examiner's statement, the word "white" on listing applied for has been refused registration repeatedly. The word "White Laurel" would seem to indicate that the remedy is a decoction is derived from a species of laurel. I cannot agree with the contention of the applicant that the words themselves are meaningless.

The decision of the Examiner of Trade-Marks is affirmed.

(Signed) A. P. Greeley.

Acting Commissioner.

December 3, 1897.

Nov. 24, 1897. M. H.

United States Patent Office.

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Ex parte C. W. Dunbar's Sons.

—o—

Trade-Mark for Louisiana Molasses.

—o—

Petition.

—o—

Application for registration filed October 2, 1897, No.54,385.

——oo——

Mr. James L. Norris for applicants.

——oo——

This is an appeal from the decision of the examiner of trade-marks, refusing registry of the words "Old Fashion" applied to molasses.

The examiner's ground of refusal is as follows:

"Refusal is based on the descriptive character of the term, as implying that the preparation is manufactured in an old style or method, and, consequently, superior in grade; and that the word accordingly lacks the arbitrary and fanciful character which should characterize the symbol which is entitled to registry as a distinguishing mark of origin."

The appellants assert that the words in question are not indicative of quality and are not deceptive, and that they possess the necessary arbitrary or fanciful qualification. They also take issue with the examiner as to the pertinency of decisions to which he has referred in support of his position.

It is well known that years ago molasses often contained a much larger proportion of sugar than is usual in modern products. It seems then that the words in question, by a natural association of ideas, might and probably would suggest to the mind of a consumer the supposition that the article upon which they were used resembled in quality and sugar content the products of former times If that supposition were correct in point of fact, the words would be descriptive. If it were not correct in point of fact, they would be deceptive. The decision of the examiner of trade-marks is affirmed.

(Signed) A. P. Greeley,
Acting Commissioner.

December 6, 1897.

United States Patent Office.

—o—

Ex parte C. W. Dunbar's Sons.

—o—

Trade-Mark for Louisiana Molasses.

—o—

Petition.

—o—

Application for registration filed October 2, 1897, No. 24,305.

——oo——

Mr. James L. Norris for applicants.

——oo——

This is an appeal from the decision of the examiner of trade-marks, refusing registry of the words "Old Fashion" applied to molasses.

The examiner's ground of refusal is as follows:

"Refusal is based on the descriptive character of the term, as implying that the preparation is manufactured in an old style or method, and, consequently, superior in grade; and that the word accordingly lacks the arbitrary and fanciful character which should characterize the symbol which is entitled to registry as a distinguishing mark of origin."

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United States Patent Office

Ex parte Bowker Fertilizer Company.

Trade Mark for Potash Fertilizer.

Petition.

Application for registration filed Feb. 4,1897, No. 52,040.

Mr. H. Ellerton Lodge for applicant.

The decision of the Examiner of Trade Marks refusing registration of the words Tobacco Ash Elements as a trade mark for a fertilizer, is affirmed.

Jan. 15,1898.

A. P. Greeley,
Acting Commissioner.
(Endorsed).

United States Patent Office

No. [illegible] Bowker Portillon Company.

Trade Mark for Potash Portillon.

Petition.

[illegible] Registration Filed Feb. 4, 1907, No. 81,040.

[illegible]. H. Hilton Lodge for applicant.

The Location of the Brooklyn Ce Trade Marks relating re-
[illegible] registration of [illegible] Potash and Bi-carbonate as a trade mark for
Portillon, is entitled.

A. P. Greely,
Acting [illegible]
(Endorsed).

[illegible] Jan. 15, 1907.

83.04.915 yme

Dec. 23, 1897. S.E.T.

UNITED STATES PATENT OFFICE.

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Ex parte Clark-Jewell-Wells Co.

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Trade-Mark for Groceries.

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PETITION.

Application for registration filed October 9, 1897.
Ser. No. 54407

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Mr. J. F. Beale for Applicant.

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This is a petition taken from the action of the examiner of trade-marks requiring the applicant to limit the goods to which his mark is applied to one class.

It is stated in the application that the mark has been applied to groceries and the particular goods said to be included in that class are - "canned goods, flour, tobacco, cigars, dried fruit, condiments, farinaceous foods, flavoring extracts, coffee, and lard, hams, bacon and canned beef." The examiner states that if so many different kinds of goods are allowed to be covered by one registration, confusion in the office classification will result. Under the statute the office should not

UNITED STATES PATENT OFFICE.

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Ex parte Clark-Jewell-Wells Co.

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Trade-Mark for Groceries.

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PETITION.

Application for registration filed October 9, 1897.

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Mr. J. P. Beale for Applicant.

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register a mark which has been previously registered to some other applicant for the same class of goods, and in order to prevent this duplication in registration, it is necessary that the office observe some form of classification.

The petitioner urges that there is no authority of law for the requirement of division in trade-mark applications to conform to the office classification and cites in support of his position ex parte Silvers, 67 O.G., 811.

Office classification of trade-marks is necessary in order to determine whether or not a trade-mark presented for registration has been before registered, and it is desirable for the purposes of such classification that a trade-mark be registered only for a particular class of goods. Yet there is not the necessity for requiring that the application for registration be so restricted that exists for restricting an application for patent to a single invention. But one trade-mark may be covered by a single registration, but however desirable it may be, the office is not warranted in requiring that the trade-mark be registered for but one class of goods. To require that a trade-mark be registered for each class of goods with which it is used - in the present case to require that the trade-mark be registered separately for five different classes of goods at an expense of five fees - would be a most onerous requirement.

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The applicant should, however, be required to state for each class of goods the length of time for which the trade-mark has been used for that class of goods.

Subject to this requirement the petition is granted.

(Signed) A. P. Greeley,

Acting Commissioner,
now Assistant Commissioner.

February 24, 1898.

The applicant should, however, be required to state for
son class of goods the length of time for which the trade-mark
as been used for that class of goods.

Subject to this requirement the petition is granted.

(signed) A. P. Greeley,

Acting Commissioner.
now Assistant Commissioner.

ruary 24, 1896.

82.0.9. 1687.

March 4, 1898.

M.H.

UNITED STATES PATENT OFFICE.

Ex parte Krusius Brothers.

Trade-Mark for Cutlery.

Recorded Vol. 65, page 331.

Petition.

Application for registration filed October 2, 1897, No.54,377.

Messrs. Munn & Company for applicants.

This is an appeal from the action of the examiner of trade-marks refusing registration of an alleged trade-mark for razors, which is stated to consist essentially of the words "Barbers Model".

The grounds of objection by the examiner are, first, a previously registered trade-mark for razors, consisting of the words "Barbers Favorite"; and, second, that the words are descriptive and advertising in character.

The prior mark referred to in the first objection was registered some twelve years ago. Appellants insist that the

UNITED STATES PATENT OFFICE.

Ex parte Krauss Brothers.

Trade-Mark for Cutlery.

Petition.

Application for registration filed October 3, 1897. No.54,347.

Moses. Munn & Company for applicants.

This is an appeal from the action of the examiner of trade-marks refusing registration of an alleged trade-mark for razors, which is stated to consist essentially of the words "Barbers Model".

The grounds of objection by the examiner are, first, a previously registered trade-mark for razors, consisting of the words "Barbers Favorite"; and, second, that the words are descriptive and advertising in character.

The prior mark referred to in the first objection was registered some twelve years ago. Appellants insist that the

words "Barbers Favorite" should not bar the registry of the words "Barbers Model", and I am inclined to agree with them. It will not be necessary to determine that question, nor to consider the correctness of the action of the office in heretofore registering the words which constitute the prior mark, for the reason that I am of the opinion that the second ground of objection is well taken. The words "Barbers Model" are descriptive, in that they convey the idea that razors so marked are a form adopted or desired by barbers, or specially adapted for their use. If not, the use of these words is deceptive, in that they would convey such a belief to the intending purchaser, and registry should therefore be refused.

Were appellants seeking to register the word "Model" alone, it would be plainly objectionable, coming within the line of reasons heretofore found fatal to the registry of the word "Standard" for furniture, and coupling the word with the word "Barbers" does not take it outside the objection any more than would have been the case had the word "Barbers" been employed with the word "Standard" as a mark for furniture.

The alleged mark is of a recent adoption, and the record shows no reason for violating the well-settled rules as to the class of words constituting registrable trade-marks. It being

class of words constituting registrable trade-marks. It being shown no reason for violating the well-settled rules as to the The alleged mark is of a recent adoption, and the record with the word "Standard" as a mark for furniture.

would have been the case had the word "Barbers" been employed "Barbers" does not take it outside the objection any more than "Standard" for furniture, and coupling the word with the word of reasons heretofore found fatal to the registry of the word alone, it would be plainly objectionable, coming within the line Were applicants seeking to register the word "Model" such a belief to the intending purchaser, and registry should therefore be refused.

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elementary that the purpose of a trade-mark is to denote the origin of the goods upon which it is used, it seems strange that manufacturers should continue to adopt, and attempt to monopolize, words which either convey an idea of the characteristics of or purposes to which the article is adapted, or which are deceptive and misleading.

For the reasons stated, the action of the examiner of trade-marks is affirmed.

(Signed) C. H. Duell,

Commissioner.

March 7, 1898.

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For the reasons stated, the action of the examiner of
rade-marks is affirmed.

(Signed) C. H. Duell,

Commissioner.

arch 7, 1898.

March 22, 1898.

83,094 295 UNITED STATES PATENT OFFICE.

Ex parte The Capital City Dairy Company.

Trade-Mark for Oleomargarine.

(Recorded Vol. 63, p. 382.)

Petition.

Application for registration filed March 7, 1898, No. 51,003.

Messrs. Finckel & Finckel for applicant.

Applicant appeals from the action of the examiner of trade-marks, refusing the registration of its alleged trade-mark for oleomargarine. The mark for which registry is sought consists of the word "Purity."

The examiner very properly rejected the application for registry, stating that the word belongs to a class of words which are descriptive or advertising in character. While the word "Purity" is not an adjective in form, and may not be commonly employed to describe a quality, nevertheless it cannot be successfully denied that it has a suggestive meaning. If the word is used in a fanciful sense, as contended by applicant's counsel, then it certainly has a tendency to deceive the ordinary buyer. Nine housewives out of ten, on seeing an article of food marked "Purity", would conclude that the word was used to indicate a quality claimed to be possessed by the article.

Trade-Mark for Oleomargarine.

(Recorded Vol. 00, p. 000.)

Petition.

Application for registration of "Red Diamond V", Class , No. 21,000.

Orange. Mineral & Chemical Co. for applicant.

Application opposed from the notice of the opposition of [illegible]-Lemon-Orange, to the registration of its alleged trade-mark for oleomargarine". The mark for which registry is sought consists of the word "Purity."

The opposer now formally withdrew the opposition for the reason, stating that the word "Purity" is a piece of words [illegible] tion are deceptive or misleading in character. While the word "Purity" is not an objectionable word, and may not be [illegible] employed to describe a quality, nevertheless it seems to be conceded that that it has a suggestive meaning. If the word is used in a fanciful sense, as contended by applicant's counsel, then it certainly has a tendency to deceive the ordinary purchaser. [illegible] [illegible] of food products "Pure", would contend that the word was used to indicate a quality claimed to be possessed by the article.

Ex parte The Cudahy Dairy Company.

Trade-Mark for Oleomargarine.

Petition.

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Any manufacturer of oleomargarine would have the right (if true) to mark his manufacture "pure", and an article that is pure is purity itself.

My attention is called to the fact that the word in question has been heretofore registered by the office as a trade-mark for bread, mineral waters, &c. Counsel for applicant frankly admits that there is no excuse for continuing a bad practice. In my opinion, the office erred in permitting the registry of the word in prior cases, and while loath to disturb any well-settled practice of the office, I shall not hesitate to do so when such prior practice is not in my opinion well founded in law.

Viewing the application as I do, the action of the examiner in refusing registration is affirmed.

(Signed) C. H. Duell,

Commissioner.

March 23, 1898.

(If time) to mark his manufacture "Pure", and at reduced rates in time in purity itself.

[illegible] to the fact that the word [illegible] registered by the office as a trade-mark for bread, mineral waters, &c. Counsel for applicant frankly admits that there is no course for continuing a word in this case. In my opinion, the office erred in permitting the registry of the word in prior cases, and while loath to disturb any well-settled practice of the office, I shall not decide to do so in any case where practice is not in my opinion well founded in law.

Viewing the application as I do, the action of the examiner in refusing registration is affirmed.

(Signed) C. H. Duell,

Commissioner.

March 26, 1898.

(Copy)

March 29, 1898.

85.09.287-

Recorded Vol. 63, P. 415.

United States Patent Office.

Ex parte Pearson Tobacco Company.

Trade-Mark for Snuff.

Petition.

Application filed March 12, 1897, No. 53,175.

Mr. F. H. Hough for applicant.

This is an appeal from the decision of the examiner of trade-marks, refusing to register the word "red" as a trade-mark for snuff.

In re Landreth, 31 O. G., 1141, the question under consideration was whether a red bag in which seed was packed could be registered as a trade mark for seed. The authorities on the question of the use of colors for trade-marks were fully reviewed, and it was held that neither the color alone of a package nor the color alone of an article of commerce could constitute

a valid trade-mark. With this holding I fully agree. If the snuff on which the word is used by appellant be red, the word describes the color of the snuff, and should therefore not be registered.

Appellant, however, contends that the word does not define the color of the goods or of the package, but that it is used in an arbitrary sense and should be registered. The answer to this is that if the word do not describe the color of the goods, purchasers might be led to believe that it did, and would therefore be deceived, and for this reason the word should not be registered.

A word to be used as a trade-mark must obviously be meaningless as applied to the goods, so as to be neither descriptive nor deceptive, nor calculated to be either descriptive or deceptive. This word is not of that class and should not be registered.

The decision of the examiner of trade-marks is affirmed.

C. H. Duell,

Commissioner.

April 6, 1898.

83.01.1207.

(Recorded Vol. 64, page 97)

April 29, 1898. M.H.

UNITED STATES PATENT OFFICE.

Ex parte Ervin A. Rice Company.

Trade-Mark for Mince-Meat.

Petition.

Application for registration filed January 11, 1898.

Ervin A. Rice Company pro se.

This is an appeal from the action of the examiner of trade-marks refusing registration of the phrase "Better than Mother's" as a trade-mark for mince-meat.

In view of the fact that appellants are prosecuting their own case, I have carefully gone over the proceedings had during the pendency of the case and have given due weight to appellants' views as set forth in their various letters and the brief in answer to the examiner's statement.

The question involved is simple and easy of solution: Can a phrase expressing quality be the valid subject of a

(Recorded Vol. 64, page 87)

April 29, 1898. M.H.

UNITED STATES PATENT OFFICE.

Ex parte Ervin A. Rice Company.

Trade-Mark for Mince-Meat.

Petition.

Application for registration filed January 11, 1898.

Ervin A. Rice Company pro se.

This is an appeal from the action of the examiner of trade-marks refusing registration of the phrase "Better than Mother's" as a trade-mark for mince-meat.

In view of the fact that appellants are prosecuting their own case, I have carefully gone over the proceedings during the pendency of the case and have given due weight to appellants' views as set forth in their various letters and the brief in answer to the examiner's statement.

The question involved is simple and easy of solution:

trade-mark? That the words "Better than Mother's" is such a phrase is evident upon the face thereof. The words clearly import that the article so marked is to be compared with some other known article, and that when so compared will be found of superior quality. This is emphasized by the fact that another brand of mince-meat is upon the market, to which has been applied the phrase "Like Mother Used to Make." Further proof of the statement that the phrase is intended to express quality is found in appellants' brief. It is there said:

"'Better than Mother's' appeals distinctively to the prevalent notion of universal progress and improvement in every direction and implies that modern methods and progressive ideas have been applied to mince meat and that our goods are <u>not</u> 'like Mother Used to Make,' but are indeed very different and decidedly improved."

It is an elementary principle of the law applicable to trade-marks, that a valid trade-mark cannot be predicated upon words or phrases expressing quality, (Browne On Trade-Marks, section 29). No one can appropriate for his exclusive use words and phrases that all may use. Anyone dealing in mince-meat can declare, if the statement be true, that his product is better than anyone else's, be that other "Mother", "Grandmother", or "Aunt."

The action of the examiner in refusing registration being correct, his ruling is affirmed.

(Signed) C. H. Duell,
Commissioner.

May 4, 1898.

trade-mark? That the words "Better than Mother's" is such a phrase is evident upon the face thereof. The words clearly import that the article so marked is to be compared with some other known article, and that when so compared will be found of superior quality. This is emphasized by the fact that another brand of mince-meat is upon the market, to which has been applied the phrase "Like Mother Used to Make." Further proof of the statement that the phrase is intended to express quality is found in appellants' brief. It is there said:

> "'Better than Mother's' appeals distinctively to the prevalent notion of universal progress and improvement in every direction and implies that modern methods and progressive ideas have been applied to mince meat and that our goods are not 'Like Mother Used to Make,' but are indeed very different and decidedly improved."

It is an elementary principle of the law applicable to trade-marks, that a valid trade-mark cannot be predicated upon words or phrases expressing quality, (Browne on Trade-Marks, section 36). No one can appropriate for his exclusive use words and phrases that all may use. Anyone dealing in mince-meat can declare, if the statement be true, that his product is better than anyone else's, be that other "Mother", "Grandmother", or "Aunt."

The action of the examiner in refusing registration being correct, his ruling is affirmed.

(Signed) C. H. Duell,
Commissioner.

May 4, 1898.

85.04.287.

(Recorded Vol. 64, page 129)

May 10, 1898. M.H.

UNITED STATES PATENT OFFICE.

Ex parte Parker, Holmes and Company.

Trade-Mark for Foot-Wear.

Petition.

Application for registration filed February 11,1898,No.55,117.

Messrs. Macleod, Calver & Randall for applicants.

Applicants are seeking to register a trade-mark the essential features of which are stated to be:

> "the representation of a shoe and the words 'The greatest value for the money,' appearing on scrolls placed adjacent to the said representation of a shoe."

The examiner has based his refusal to register the mark upon various grounds. He states that the symbol is the representation of applicants' goods, and justly criticises the sentence quoted as part of the essential features of the mark. In this connection he cites two prior registered marks as embodying substantially the same pictorial device. An examination of these prior marks leads me to the conclusion that there are sufficient differences between applicants' mark and those already registered to take them out of the ordinary rule that would be a basis for refusing registration on the ground that

(Recorded Vol. 64, page 129)

May 10, 1898. M.H.

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Trade-Mark for Foot-Wear.

Petition.

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Messrs. Macleod, Calver & Ramsdell for applicants.

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they were either identical therewith or so nearly resembled the other mark as to cause confusion or mistake in the mind of the public or to deceive purchasers. I do not think that the objection taken to the common use of the symbol is well taken.

I am, however, inclined to uphold the conclusion of the examiner for two reasons: first, that a trade-mark should not be registered containing as an essential portion thereof words of an advertising character, such as employed by applicants and stated to be an essential part of their mark; and, second, notwithstanding the statement that these words form a part of the essential features of the mark, I do not think that they do. The examiner has made no objection to the statement embracing these words as a part of the essential features, but I do not think that the statement of the applicants as to what are the essential features makes them so, but that the essential features are really what lend character to the entire mark and would be so considered. Ex parte Metropolitan Watch Company, 44 MS. Dec., 272.

I do not think that the office is justified in registering trade-marks which contain statements not well founded under the rule as to what the essential features are. The ordinary observer examining the alleged trade-mark would say that the essential features were the partially laced shoe, enclosed by two concentric circles, and the words Parker, Holmes & Co., with the word

they were either identical therewith or so nearly resembled the other mark as to cause confusion or mistake in the mind of the public or to deceive purchasers. I do not think that the objection taken to the common use of the symbol is well taken.

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I do not think that the office is justified in registering trade-marks which contain statements not well founded under the rule as to what the essential features are. The ordinary observer examining the alleged trade-mark would say that the essential features were the partially lined shoe, enclosed by two concentric circles, and the words Parker, Holmes & Co., with the word

Boston, placed between the two circles. On turning to the description of the trade-mark, I find it stated:

"Our trade-mark consists of a representation of a man's shoe, partially laced with the lace tied in a bow knot and surrounded by concentric circles, between which are placed the words 'Parker, Holmes & Company, Boston', with a star at each end of the word 'Boston'."

It seems to me that the essential features of the mark are set forth in the matter just quoted. Such mark I believe to be registrable, and it may be registered, so far as anything to the contrary is shown by the rejection and reasons therefor of the examiner.

In including the firm name as a part of the essential features of the mark, I do not lose sight of the well-settled general rule that an ordinary surname cannot be appropriated as a trade-mark by any one person as against others of the same name who are using it for a legitimate purpose. Brown Chemical Co. v. Meyer, 139 U.S., 540. The courts would not hesitate to enjoin a firm of the same name carrying on the same business from placing upon the market shoes bearing as a mark the name of the firm arranged as shown in the mark now sought to be registered, when used in connection with the shoe placed as shown in applicants' mark.

If the applicants see fit to amend their statement as above indicated, the examiner is directed to allow the same, but as

Boston', placed between the two circles. On turning to the description of the trade-mark, I find it stated:

"Our trade-mark consists of a representation of a man's shoe, partially laced with the lace tied in a bow knot and surrounded by concentric circles, between which are placed the words 'Parker, Holmes & Company, Boston', with a star at each end of the word 'Boston'."

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If the applicants see fit to amend their statement as above indicated, the examiner is directed to allow the same, but as

presented, I do not think that the essential features are correctly set forth, and if correctly set forth, I do not think that the mark is properly registrable, and the decision of the examiner is therefore affirmed.

(Signed) C. H. Duell,

Commissioner.

May 11, 1898.

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(Signed) C. H. Duell,

Commissioner.

May 11, 1898.

(Recorded Vol. 64, page 156)

May 12, 1898. M. H.

UNITED STATES PATENT OFFICE.

Ex parte George S. Rall.

Trade-Mark for Medicine.

Petition.

Application for registration filed Nov. 24, 1897, No.54,652.

Mr. A. L. Jackson for applicant.

This is an appeal from the decision of the examiner refusing to registor the words "Perfect Face Paste", as a trade-mark for medical compounds. Applicant states in his specification that the compounds comprised in the class upon which he uses the mark are remedies for removing blemishes, healing, and beautifying.

The examiner has refused to register the mark upon the ground that the phrase claimed is purely descriptive in character and incapable of exclusive appropriation; that the word "Perfect" is an adjective in common use in speech and for advertising purposes, and that the words "Face Paste" merely indicate the form of the composition and its purpose. The position of the examiner seems to be well taken, and applicant's brief does not answer the objection raised to the use of the word "Perfect."

(Recorded Vol. 64, page 156)

12, 1898. M. H.

UNITED STATES PATENT OFFICE.

Ex parte George S. Hall.

Trade-Mark for Medicine.

Petition.

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lication for registration filed Nov. 24, 1897, No. 54,652.

A. L. Jackson for applicant.

This is an appeal from the decision of the examiner re-

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ing purposes, and that the words "Face Paste" merely indicate

form of the composition and its purpose. The position of the

miner seems to be well taken, and applicant's brief does not

wer the objection raised to the use of the word "Perfect."

Applicant admits that the word "Paste" would be descriptive if applied to certain classes of articles, but contends that it is not descriptive of the articles on which he uses it. I do not think that his argument is well founded, when he insists that the word "Paste" is understood "to mean a composition for uniting or sticking bodies together and holding them in close contact." This is altogether too narrow a definition to apply to the word. An ointment is or very often may be a paste, and when applicant admits that his composition "is a cream or ointment and is applied by rubbing it in the skin," he cuts the ground from under his feet.

In my opinion, the action of the examiner in refusing registry is well founded, and it is therefore affirmed.

(Signed) C. H. Duell,

Commissioner.

May 16, 1898.

Applicant admits that the word "Paste" would be descriptive if applied to certain classes of articles, but contends that it is not descriptive of the articles on which he uses it. I do not think that his argument is well founded, when he imputes that the word "Paste" is understood "to mean a composition for uniting or sticking bodies together and holding them in close contact." This is altogether too narrow a definition to apply to the word. An ointment is or very often may be a paste, and when applicant admits that his composition "is a cream or ointment and is applied by rubbing it in the skin," he cuts the ground from under his feet.

In my opinion, the action of the examiner in refusing registry is well founded, and it is therefore affirmed.

(Signed) C. H. Duell,

Commissioner.

May 16, 1888.

85 O.G. 238.

(Recorded Vol. 64, page 157)

May 17, 1898. M. H.

UNITED STATES PATENT OFFICE.

Ex parte George Calvert and Brother.

Trade-Mark for Plug Tobacco.

Petition.

Application for registration filed January 11, 1898, No. 54,886.

Messrs. Munn & Company for applicants.

The examiner of trade-marks has refused to register as a trade-mark for plug tobacco a red ribbon applied to said tobacco.

Petitioners first sought to register the words "Silk Ribbon" and when rejected upon two prior trade-marks, one of which was for the word "Silk" and the other for the word "Ribbons", amended their application and stated that the essential feature of their mark was "a coiled plug of tobacco having a ribbon passed between the coils thereof and its ends tied together." Registration still being refused, the drawing was canceled, a new one substituted therefor, and the essential feature stated to be "a red ribbon applied to a plug of tobacco."

Upon an examination and comparison of the two drawings, it appears to me that they are so dissimilar that the second ought

(Recorded Vol. 64, page 157)

May 17, 1898. M. H.

UNITED STATES PATENT OFFICE.

Ex parte George Calvert and Brother.

Trade-Mark for Plug Tobacco.

Petition.

Application for registration filed January 11, 1898, No. 84,898.

Messrs. Munn & Company for applicants.

The examiner of trade-marks has refused to register as a trade-mark for plug tobacco a red ribbon applied to said tobacco.

Petitioners first sought to register the words "Silk Ribbon" and when rejected upon two prior trade-marks, one of which was for the word "Silk" and the other for the word "Ribbons", amended their application and stated that the essential features of their mark was "a coiled plug of tobacco having a ribbon passed between the coils thereof and its ends tied together." Registration still being refused, the drawing was canceled, a new one substituted therefor, and the essential feature stated to be "a red ribbon applied to a plug of tobacco."

Upon an examination and comparison of the two drawings, it appears to me that they are so dissimilar that the second might

not to have been substituted for the first, and I cannot refrain from calling attention to the fact that the statement as to the length of use of the mark as originally filed may or may not apply to the mark now sought to be registered. I do not think it good practice to permit such a change to be made in what is set forth as the essential feature of a trade-mark as might make the statement as to the period of use not apply to the new mark. The substitution having been made, however, and the amendment inserted, I will pass over that question.

Passing to the merits of the case, I find that the mark as now presented stands rejected upon the prior registration of the word "Ribbons." The statement forming a part of the prior registered mark says, in substance, that the mark may be printed upon a label and the label affixed to the tobacco, or the mark may be printed upon the article or the package containing it.

While there is no physical resemblance between the word ribbons and a piece of ribbon, yet the probability of deceiving purchasers is so great that I think the prior mark is a fair reference. Tobacco put upon the market under the prior mark would, it seems to me, become known as "the ribbon brand", and tobacco placed upon the market under applicants' mark would manifestly become known as "the ribbon brand." A careful purchaser would not be deceived, but the ordinary purchaser would be misled

not to have been substituted for the first, and I cannot refrain from calling attention to the fact that the statement as to the length of use of the mark as originally filed may or may not apply to the mark now sought to be registered. I do not think it good practice to permit such a change to be made in what is set forth as the essential feature of a trade-mark as might make the statement as to the period of use not apply to the new mark. The substitution having been made, however, and the amendment inserted, I will pass over that question.

Passing to the merits of the case, I find that the mark as now presented stands rejected upon the prior registration of the word "Ribbons." The statement forming a part of the prior registered mark says, in substance, that the mark may be printed upon a label and the label affixed to the tobacco, or the mark may be printed upon the article or the package containing it.

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and any purchaser having heard of the ribbon brand, upon inquiring for that brand, would take the one as soon as he would the other. I do not think that it is a wise policy for the office to register marks which in any event would tend to create confusion.

The action of the examiner is therefore affirmed.

(Signed) C. H. Duell,

Commissioner.

May 17, 1898.

and any purchaser having heard of the ribbon brand, upon inquiring for that brand, would take the one as soon as he would the other. I do not think that it is a wise policy for the office to register marks which in any event would tend to create confusion.

The action of the examiner is therefore affirmed.

(Signed) C. H. Duell,
Commissioner.

May 17, 1898.

8309. 1513

(Recorded Vol. 64, page 182)

May 18, 1898. M. H.

UNITED STATES PATENT OFFICE.

Ex parte Meriwether & Company.

Trade-Mark for Plug of Tobacco.

Petition.

Application for registration filed September 29, 1897, #54,368.

Messrs. C. A. Snow & Co. for applicants.

Registration having been refused for the words "Peach, Greenville" as a trade-mark for plug tobacco, applicants have taken this appeal, and in an elaborate brief have sought to show that the action of the examiner was erroneous and therefore should be reversed on appeal.

It appears that the word "Peach" as a trade-mark for plug tobacco, &c., was registered in 1884, based upon a use from 1845. Registration has been refused on this mark and on the ground that the word "Greenville" is geographical. That the word "Greenville" is geographical cannot be successfully controverted, for the reason that it appears from the United States Official Postal Guide that there are some thirty Post Offices of that name in the United States, but I do not base my decision in this case upon

(Recorded Vol. 64, page 182)

May 18, 1898. M. H.

UNITED STATES PATENT OFFICE.

In parte Merriweather & Company.

Trade-Mark for Plug of Tobacco.

Petition.

Application for registration filed September 29, 1897, #64,508.

Messrs. C. A. Snow & Co. for applicants.

Registration having been refused for the words "Green Greenville" as a trade-mark for plug tobacco, applicants have taken this appeal, and in an elaborate brief have sought to show that the action of the examiner was erroneous and therefore should be reversed on appeal.

It appears that the word "Green" as a trade-mark for plug tobacco, &c., was registered in 1884, based upon a use from 1865. Registration has been refused on this mark and on the ground that the word "Greenville" is geographical. That the word "Greenville" is geographical cannot be successfully controverted, for this reason that it appears from the United States Official Postal Guide that there are some thirty Post Offices of that name in the United States; but I do not base my decision in this case upon

the geographical character of the word "Greenville."

Applicants seek to register a compound mark, and the rule which should control in such cases is well set forth in Bush & Co., 10 O.G., 164, in which the Commissioner held that it was not "a safe practice to permit the registration of a compound trade-mark, one of whose distinguishing features has already been registered."

A cursory examination of the decisions of this office relative to the registration of trade-marks shows many instances in which the correct practice above referred to has been followed. The words "Golden Star" were refused registration in view of a prior registration showing the word "Star", and the representation of a star. Registration of the words "Railway Timekeeper" and the representation of a locomotive was refused in view of the prior registration of the word "Railway" and of the fact that the word "Timekeeper" was descriptive of the article to which the mark was applied. The word "Puff" was refused registration in view of the previously registered words "Opera Puff". The words "Black Swan" were refused registration in view of the prior registration of the word "Swan".

It has also been held by the office that the word "Royal" was infringed by the use of the words "Royal Dutch." It was stated in the case then under consideration that the word "Royal"

the geographical character of the word "Greenville."

Applicants seek to register a compound mark, and the rule which should control in such cases is well set forth in Ruth & Co., 10 O.G., 164, in which the Commissioner held that it was not "a safe practice to permit the registration of a compound trade-mark, one of whose distinguishing features has already been registered."

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It has also been held by the office that the word "Royal" was infringed by the use of the words "Royal Dutch." It was stated in the case then under consideration that the word "Royal"

was the essential part of the trade-mark, while the word "Dutch" was merely descriptive. The words "Old Taylor" were refused registration on the prior registration of the word "Taylor." The words "Royal-Salted-Codfish", with hyphens between the words, were refused registration in view of the prior registration of the word "Royal."

As I view it, if a call were made for "Peach tobacco," it could properly be filled by handing the customer the "Peach Greenville" brand. In other words, the purchaser using ordinary caution could easily be deceived.

In ex parte Caire, 15 O.G., 248, in which registration was refused of the words "Black Swan", the Commissioner thus correctly enunciated the law as repeatedly held by the courts relative to the class of purchasers to be protected against misleading trade-marks:

"It has been held that even if wholesale buyers are not misled, but retailers or consumers are, by the resemblance which one mark bears to another, the right of action exists."

He also said, citing various authorities:

"And it has also been held that if a mark is calculated to mislead, even if no one has actually been deceived, the courts will presume the resemblance to be not accidental, but intentional, and for the purpose of deception, and for this purpose the whole trade-mark need not have been counterfeited."

This office should not give its stamp of approval to a class of trade-marks, the use of which has a tendency to mislead

was the essential part of the trade-mark, while the word "Dutch" was merely descriptive. The words "Old Taylor" were refused registration on the prior registration of the word "Taylor." The words "Royal-Salted-Goodluck", with hyphens between the words, were refused registration in view of the prior registration of the word "Royal."

As I view it, if a suit were made for "Pecan tobacco," it could properly be filled by handing the customer the "Pecan Greenville" bread. In other words, the purchaser using ordinary caution could easily be deceived.

In ex parte Cairo, 15 O.G., 248, in which registration was refused of the words "Black Swan", the Commissioner thus correctly enunciated the law as repeatedly held by the courts relative to the class of purchasers to be protected against misleading trade-marks:

"It has been held that even if wholesale buyers are not misled, but retailers or consumers are, by the resemblance which one mark bears to another, the right of action exists."

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"And it has also been held that if a mark is calculated to mislead, even if no one has actually been deceived, the courts will presume the resemblance to be not accidental, but intentional, and for the purpose of deception, and for this purpose the whole trade-mark need not have been counterfeited."

This office should not give its stamp of approval to a class of trade-marks, the use of which has a tendency to mislead

or deceive the public and thus take a position antagonistic to well settled rules of law.

I am clearly of the opinion that the words should not be registered, and the action of the examiner refusing registration is affirmed.

(Signed) C. H. Duell,

Commissioner.

May 21, 1898.

or deceive the public and thus take a position antagonistic to well settled rules of law.

I am clearly of the opinion that the words should not be registered, and the action of the examiner refusing registration is affirmed.

(Signed) C. H. Duell,

Commissioner.

May 31, 1898.

84.07.145

May 25, 1898. (Recorded Vol.64,p.220) M. H.

UNITED STATES PATENT OFFICE.

Ex parte Kaufmann & Blache.

Trade-Mark for Gin.

Petition.

Application for registration filed November 11, 1897, No.54,568.

Mr. Frederic B. Keefer for applicants.

Applicants seek to register a trade-mark for gin, the essential feature of which they state consists -

> "in the pictorial representation of a cat in a crouching position, three of its legs resting on the ground, and the fourth being in an elevated position, the whole being printed in gold on a red background. This has generally been arranged as shown in the accompanying drawing, in which the colors, excepting black and white, are omitted, and the words 'Old Tom' inclosed in a border surmounting the same, and the words 'Celebrated Cordial Gin' appearing beneath the same."

The Examiner has rejected the application upon a trade-mark for gin and other liquors, No.15,521, registered May 29, 1888, the essential feature of which is stated to consist "of the representation of a cat standing upon a barrel."

An examination of the registered mark shows the cat standing upon a barrel upon which are placed the words "Old Tom." There are differences in the details, but the salient feature of

UNITED STATES PATENT OFFICE.

Ex parte Kaufmann & Blaone.

Trade-Mark for Gin.

Petition.

Application for registration filed November 11, 1887, No.54,588.

Mr. Frederic B. Keefer for applicants.

Applicants seek to register a trade-mark for gin, the essential feature of which they state consists -

"in the pictorial representation of a cat in a crouching position, three of its legs resting on the ground, and the fourth being in an elevated position, the whole being printed in gold on a red background. This has generally been arranged as shown in the accompanying drawing, in which the colors, excepting black and white, are omitted, and the words 'Old Tom' inclosed in a border surmounting the same, and the words 'Celebrated Cordial Gin' appearing beneath the same."

The Examiner has rejected the application upon a trade-mark for gin and other liquors, No.15,821, registered May 29, 1888, the essential feature of which is stated to consist "of the representation of a cat standing upon a barrel."

An examination of the registered mark shows the cat standing upon a barrel upon which are placed the words "Old Tom."

There are differences in the details, but the salient feature of

both being the representation of a cat, the minor differences are such as not to sufficiently differentiate the two marks. Placed side by side, the ordinary observer would not be deceived, but a purchaser calling for the original brand would in nine cases out of ten as readily take the article bearing the mark now sought to be registered. I do not think that he would pay any attention to the fact that the cat of the mark sought to be registered is printed in gold on a red background, nor would he, in my opinion, notice the absence of the barrel.

The rights given by the trade-mark law of 1881 are very limited, as was stated by the Court of Appeals of the District of Columbia in Einstein v. Sawhill, 65 O.G., 918:

> "The right is not created by the federal government, and does not emanate from it, as do patent rights, and all that Congress has sought to do is to provide a recording act of a very limited character, the better to evidence the ownership of the right."

The Patent Office continually issues patents for inventions, the making, use, or sale of which would infringe upon prior patents. This is lawfully and properly done, but the relation of the Patent Office to the issue of patents is very different from its relation to the registration of trade-marks. A patent is granted for a limited term, whereas a trade-mark is practically unlimited as to time, and while trade-marks are registered by the Patent Office in the first instance for thirty

both being the representation of a cat, the minor differences are such as not to sufficiently differentiate the two marks. Placed side by side, the ordinary observer would not be deceived, but a purchaser calling for the original brand would in nine cases out of ten as readily take the article bearing the mark now sought to be registered. I do not think that he would pay any attention to the fact that the cat of the mark sought to be registered is printed in gold on a red background, nor would he, in my opinion, notice the absence of the barrel.

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years, yet the law provides that "at any time during the six months prior to the expiration of the term of thirty years, such registration may be renewed, on the same terms and for a like period." In my opinion the office should not register trade-marks which would be held to be an infringement upon prior registered or unregistered trade-marks. The Patent Office should not register trade-marks which would have a tendency to mislead or deceive purchasers. The act of 1881 expressly provides that the office shall not issue any trade-mark -

> "which is identical with a registered or known trade-mark owned by another, and appropriate to the same class of merchandise, or which so nearly resembles some other person's lawful trade-mark as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers."

A cursory examination of a few of the reported trade-mark cases shows that the decisions of the courts are uniform in holding that the marks need not be identical to constitute infringement. In one case the plaintiffs sold their condensed milk in tins bearing labels with the figure of a milkmaid with a medal on each side. The defendants began to sell milk in tins labeled with the figure of a milkman, with the arms of Switzerland in a medallion on either side. The defendants were enjoined.

In another case the plaintiffs used the device of a bull's head, and although there were points of difference between the bull's head used by the plaintiffs and the one put out by the

years, yet the law provides that "at any time during the six months prior to the expiration of the term of thirty years, such registration may be renewed, on the same terms and for a like period." In my opinion the office should not register trade-marks which would be held to be an infringement upon prior registered or unregistered trade-marks. The Patent Office should not register trade-marks which would have a tendency to mislead or deceive purchasers. The act of 1881 expressly provides that the office shall not issue any trade-mark -

> "which is identical with a registered or known trade-mark owned by another, and appropriate to the same class of merchandise, or which so nearly resembles some other person's lawful trade-mark as to be likely to cause confusion or mistake in the mind of the public or to deceive purchasers."

A cursory examination of a few of the reported trade-mark cases shows that the decisions of the courts are uniform in holding that the marks need not be identical to constitute infringement. In one case the plaintiffs sold their condensed milk in time packing labels with the figure of a milkmaid with a medal on each side. The defendants began to sell milk in time labeled with the figure of a milkman, with the arms of Switzerland in a medallion on either side. The defendants were enjoined.

In another case the plaintiffs used the device of a bull's head, and although there were points of difference between the bull's head used by the plaintiffs and the one put out by the

defendant, the court granted an injunction. The court said:

"It is not necessary that the symbol, figure, or device used or printed and sold for use should be a fac-simile or precise copy of the original trade-mark, or so close an imitation that the two cannot be distinguished except by an expert, or upon a critical examination by one familiar with the genuine trade-mark. If the false is only colorably different from the true, if the resemblance is such as to deceive a purchaser of ordinary caution, or if it is calculated to deceive the careless and unwary, and thus to injure the sale of the goods of the proprietor of the trade-mark, the injured party is entitled to relief."

Colman v. Crump, 70 N.Y., 578.

In another case where the plaintiff employed the words "Charter Oak" and a sprig of oak leaves, the defendant was enjoined, although omitting the sprig of leaves.

The mere fact that the present applicants omit the barrel would, under the latter case, lead to the grant of an injunction against the use of their mark.

The books are replete with similar cases, but it is unnecessary to add to those already cited.

The action of the examiner in refusing registration is affirmed.

(Signed) C. H. Duell,

Commissioner.

May 26, 1898.

defendant, the court granted an injunction. The court said:

"It is not necessary that the symbol, figure, or device used or printed and sold for use should be a fac-simile or precise copy of the original trade-mark, or so close an imitation that the two cannot be distinguished except by an expert, or upon a critical examination by one familiar with the genuine trade-mark. If the false is only colorably different from the true, if the resemblance is such as to deceive a purchaser of ordinary caution, or if it is calculated to deceive the careless and unwary, and thus to injure the sale of the goods of the proprietor of the trade-mark, the injured party is entitled to relief."

Coleman v. Crump, 70 N.Y., 573.

In another case where the plaintiff employed the words "Charter Oak" and a sprig of oak leaves, the defendant was enjoined, although omitting the sprig of leaves.

The more fact that the present applicants omit the barrel would, under the latter case, lead to the grant of an injunction against the use of their mark.

The books are replete with similar cases, but it is unnecessary to add to those already cited.

The action of the examiner in refusing registration is affirmed.

(Signed) C. H. Duell,

Commissioner.

May 26, 1898.

(Recorded Vol. 64, page 329).

UNITED STATES PATENT OFFICE.

Ex parte The Noxall Cleaner Co.

Trade-Mark for a Saponaceous Compound.

Petition.

Application for registration filed February 1, 1898, No.55,040.

Mr. C. F. W. Dassler for applicant.

Section 3 of the Trade-Mark Act of March 3, 1881, under which registration is sought, expressly states that "no alleged trade-mark shall be registered ——— which is merely the name of the applicant."

The trade-mark here sought to be registered is the substantial part of applicant's name, and therefore, in my opinion, is not registrable. As stated by me in ex parte F. H. Gilson Company, decided June 14, 1898, the fact that the words "Noxall Cleaner" are not the full name of the corporation, but only a portion of it, is to my mind immaterial.

The petition is denied.

(Signed) C. H. Duell,
Commissioner.

June 17, 1898.

(Recorded Vol. 64, page 329).

UNITED STATES PATENT OFFICE.

Ex parte The Noxall Cleaner Co.

Trade-Mark for a Saponaceous Compound.

Petition.

Application for registration filed February 1, 1898, No. 55,040.

Mr. C. F. W. Dassler for applicant.

Section 3 of the Trade-Mark Act of March 3, 1881, under which registration is sought, expressly states that "no alleged trade-mark shall be registered ——— which is merely the name of the applicant."

The trade-mark here sought to be registered is the substantial part of applicant's name, and therefore, in my opinion, is not registrable. As stated by me in ex parte T. H. Gibson Company, decided June 14, 1898, the fact that the words "Noxall Cleaner" are not the full name of the corporation, but only a portion of it, is to my mind immaterial.

The petition is denied.

(Signed) C. H. Duell,

Commissioner.

June 17, 1898.

83.0.9, 1502.

June 2, 1898. (Recorded Vol. 64, Page 344). M.H.

UNITED STATES PATENT OFFICE.

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Ex parte J. M. & V. Weil.

Trade-Mark for Leather and Leather Goods.

Petition.

Application for registration filed November 13, 1897, #54,583.

Messrs. Barton & Brown for applicants.

Applicants sought originally to register as a trade-mark for skins and tanned leathers the word "Yucatan." Registration of that word having been refused by the examiner on the ground that the word was geographically descriptive and incapable of exclusive appropriation by any one, the applicants amended their application and asked for the registry of the word "Yucatan within the described square figure, as shown." The examiner having rejected the application as amended, applicants by petition seek to review his action.

While admitting the recognized principle of law that geographical terms are incapable of registration, applicants seek to except the word "Yucatan" from the general rule. It is insisted that because they carry on their business at Chicago,

UNITED STATES PATENT OFFICE.

Ex parte J. M. & V. Weil.

Trade-Mark for Leather and Leather Goods.

Petition.

Application for registration filed November 15, 1897, No. 384,885.

Messrs. Barton & Brown for applicants.

Applicants sought originally to register as a trade-mark for skins and tanned leathers the word "Wingstan." Registration of that word having been refused by the examiner on the ground that the word was geographically descriptive and incapable of exclusive appropriation by any one, the applicants amended their application and asked for the registry of the word "Wingstan within the described square Figure, as shown."

The examiner having rejected the application as amended, applicants by petition seek to review his action.

While admitting the recognized principle of law that geographical terms are incapable of registration, applicants seek to except the word "Wingstan" from the general rule. It is insisted that because they carry on their business at Chicago,

Illinois, the word has lost its geographical significance when applied to leathers and skins of their manufacture, although hides may constitute a principal export of Yucatan.

I do not think their position is tenable. Any one importing hides from Yucatan or purchasing hides exported from Yucatan would, in my opinion, be entitled to call or mark skins and tanned leathers having such origin by the name "Yucatan."

The question remaining to be considered is whether by placing the word "Yucatan" within the described square figure, as shown, applicants have disclosed a registrable trade-mark. The answer to the question seems to turn upon what is to be considered the essential feature of the trade-mark. At this time it is too well settled to admit of controversy, that the essential features of the trade-mark are those which serve in whole or in part to distinguish the goods of the party by whom such mark is adopted. The specification as amended states:

> "The essential or distinguishing feature of our trade-mark, we consider to be the word 'Yucatan' within the described square figure as shown."

In other words, it is the word "Yucatan", and the arrangement of the word within the square figure is a non-essential. As Yucatan, taken by itself, is not registrable, I do not think it is made so by placing it within the square figure.

Ex parte Farnum & Co., 18 O.G., 412. In referring to that case

In the case of Yuban, it is the word "Yuban", and the arrangement of the word within the square figure is a non-essential. As Yuban, taken by itself, is not registrable, I do not think it is made so by placing it within the square figure.

In Monte Yarmon & Co., 12 O.G., 412. In referring to that case it should be noted that the word has lost its geographical significance when applied to leathers and skins of their manufacture, although Lisbon may constitute a principal export of Yuman.

I do not think their position is tenable. Any one importing hides from Yuman or purchasing hides exported from Yuman would, in my opinion, be entitled to call or mark skins and tanned leathers having such origin by the name "Yuman."

The question remaining to be considered is whether by placing the word "Yuman" within the described square figure, as shown, applicants have disclosed a registrable trade-mark. The answer to the question seems to turn upon what is to be considered the essential feature of the trade-mark. At this time it is too well settled to admit of controversy, that the essential features of the trade-mark are those which serve in whole or in part to distinguish the goods of the party by whom such mark is adopted. The specification as amended states:

"The essential or distinguishing feature of our trade-mark, we consider to be the word 'Yuman' within the described square figure as shown."

In other words, it is the word "Yuman", and the arrangement of the word within the square figure is a non-essential.

it was said in ex parte Adriance, Platt & Co., 20 O.G., 1820, which was a case where it was held that the name of a person, firm or corporation does not acquire an arbitrary significance by association with an otherwise valid trade-mark, that:

> "In the case of ex parte Farnum & Co., 18 O.G., 412, I had occasion to hold that a geographical term acquired no arbitrary significance from association with an arbitrary symbol; and in the present case I feel constrained to hold, by parity of reasoning, that the name of the person, firm, or corporation does not acquire an arbitrary signification by association with an otherwise valid trade-mark, and cannot therefore be included as an essential feature of such trade-mark. This conclusion, I think, will be found to be in harmony with the decisions of the courts so far as they are applicable to the subject."

From principle and authority, I am constrained to hold that the trade-mark now sought to be registered is not properly registrable, and therefore the decision of the examiner is affirmed.

(Signed) C. H. Duell,

Commissioner.

June 14, 1898.

it was held in ex parte Advisance, Platt & Co., 20 O.D., 1890,

which was a case where it was held that the name of a person,

firm or corporation does not acquire an arbitrary significance

by association with an otherwise valid trade-mark, that:

"In the case of ex parte Tarnum & Co., 18 O.G., 112,
I had occasion to hold that a geographical term acquired no
arbitrary significance from association with an arbitrary
symbol; and in the present case I feel constrained to hold,
by parity of reasoning, that the name of the person, firm,
or corporation does not acquire an arbitrary significance
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in harmony with the decisions of the courts so far as they
are applicable to the subject."

From principle and authority, I am constrained to hold that the trade-mark now sought to be registered is not properly registrable, and therefore the decision of the examiner is affirmed.

(signed) C. H. Duell,

Commissioner.

June 14, 1892.

84.0.9. 304

June 7, 1898. (Recorded Vol. 64, Page 360) M. H.

UNITED STATES PATENT OFFICE.

Ex parte Pittsburgh Pump Company.

Trade-Mark for Pumps.

84 O.G. 309

Petition.

Application for registration filed April 16, 1897, No.55,427.

Mr. Chas. N. Clarke and Mr. W. E. Corwin for applicant.

This is a petition from the examiner's refusal to register as a trade-mark for pumps the words "P-I-T-T-S-B-U-R-G-H P-U-M-P" arranged in letter-hyphenated form. The petitioner, the Pittsburgh Pump Company, is a firm domiciled and doing business in the city of Pittsburgh, Pennsylvania. As originally presented applicant sought to register the words "Pittsburgh Pump." The words being objected to by the office on the ground that they were geographical and descriptive in their nature, and hence not registrable, an attempt was made by amendment to register the words in a specific form shown by the fac-simile which accompanied the application. As shown, the top and bottom lines of the letters formed arcs of circles, convex to each other. A rejection followed this action, whereupon an amendment

June 7, 1898. (Recorded Vol. 64, Page 360) M. H.

UNITED STATES PATENT OFFICE.

Ex parte Pittsburgh Pump Company.

Trade-Mark for Pumps.

Petition.

Application for registration filed April 16, 1897, No. 55,457.

Mr. Chas. H. Clarke and Mr. W. H. Corwin for applicant.

This is a petition from the examiner's refusal to register as a trade-mark for pumps the words "P-I-T-T-S-B-U-R-G-H P-U-M-P" arranged in letter-hyphenated form. The petitioner, the Pittsburgh Pump Company, is a firm domiciled and doing business in the city of Pittsburgh, Pennsylvania. As originally presented application sought to register the words "Pittsburgh Pump." The words being objected to by the office on the ground that they were geographical and descriptive in their nature, and hence not registrable, an attempt was made by amendment to register the words in a specific form shown by the fac-simile which accompanied the application. As shown, the top and bottom lines of the letters formed arcs of circles, convex to each other. A rejection followed this action, whereupon an amendment

was filed consisting of a new drawing showing the words as hyphenated, and the statement was amended setting forth that the essential feature "is the words P-I-T-T-S-B-U-R-G-H P-U-M-P, arranged in letter-hyphenated form." The statement was also amended setting forth that the mark had been used since the 22d day of March, 1898, although the application was originally filed April 16, 1897.

I do not think this amendment ought to have been received. As stated by me in ex parte Calvert & Brother, 64 MS. Dec., 157:

> "I do not think it good practice to permit such a change to be made in what is set forth as the essential feature of a trade-mark as might make the statement as to the period of use not apply to the new mark."

In this case the period of use of the mark as originally claimed would not apply to the new mark. However, the amendment having been inserted, I will pass over that question and consider the case on its merits.

On the merits as presented the question is clean-cut. Briefly stated it is, Can geographical and descriptive words, not registrable in themselves as lawful trade-marks, become registrable by arranging them in letter-hyphenated form?

In ex parte Farnum & Co., 18 O.G., 412, the following rulings applicable to the present case were made:

> "1. That as a rule geographical names cannot be allowed registration as trade-marks.
>
> "2. That before any geographical name can be said to be registrable it must clearly appear that the place of that

was filed consisting of a new drawing showing the words as hyphenated, and the statement was amended setting forth that the essential feature "is the words P-I-T-T-S-B-U-R-G-H P-U-M-P, arranged in letter-hyphenated form." The statement was also amended setting forth that the mark had been used since the 22d day of March, 1898, although the application was originally filed April 10, 1897.

I do not think this amendment ought to have been received. As stated by me in ex parte Calvert & Brother, 64 MS. Dec., 124:

"I do not think it good practice to permit such a change to be made in what is set forth as the essential feature of a trade-mark as might make the statement as to the period of use not apply to the new mark."

In this case the period of use of the mark as originally claimed would not apply to the new mark. However, this amendment having been inserted, I will pass over that question and consider the case on its merits.

On the merits as presented the question is clean-cut. Briefly stated it is, Can geographical and descriptive words, not registrable in themselves as lawful trade-marks, become registrable by arranging them in letter-hyphenated form?

In ex parte Parrum & Co., 13 O.C., 412, the following rules applicable to the present case were made:

"1. That as a rule geographical names cannot be allowed registration as trade-marks.

"2. That before any geographical name can be said to be registrable it must clearly appear that the place of that

name is such a one that the word will be understood by the general purchasing public as primarily fanciful, and that manufacturers of like goods at such place cannot so mark their wares and claim the protection of our laws.

"5. That the essential features of a trade-mark are those only which serve in whole or in part to distinguish the goods of the party by whom such mark is adopted, and it is not proper that anything should be described as essential which the courts would hold otherwise."

The word Pittsburgh being geographical, and pump descriptive, and the petitioner carrying on the business of the manufacture of pumps at Pittsburgh, Pennsylvania, it follows that it has no right to monopolize the words, at least as against every other manufacturer of pumps in Pittsburgh.

The question remaining is whether by hyphenating the words the essential feature of the trade-mark has been changed to a degree that would warrant registration. The geographical and descriptive words still remain, notwithstanding the form in which they are shown in the fac-simile, the essential features of the trade-mark, and it would be a very close observer who would pay any heed to the manner in which the letters were separated.

In the case of ex parte J. M. and V. Weil, recently decided by me, I held that in my opinion a geographical word did not become a registrable trade-mark by enclosing it in a certain geometrical figure, because the geographical word still remained the essential feature of the mark. Equally so do the words

name is such a one that the word will be understood by the general purchasing public as primarily fanciful, and that manufacturers of like goods at such place cannot so mark their wares and claim the protection of our laws.

"3. That the essential features of a trade-mark are those only which serve in whole or in part to distinguish the goods of the party by whom such mark is adopted, and it is not proper that anything should be described as essential which the courts would hold otherwise."

The word Pittsburgh being geographical, and pump descriptive, and the petitioner carrying on the business of the manufacture of pumps at Pittsburgh, Pennsylvania, it follows that it has no right to monopolize the words, at least as against every other manufacturer of pumps in Pittsburgh.

The question remaining is whether by hyphenating the words the essential feature of the trade-mark has been changed to a degree that would warrant registration. The geographical and descriptive words still remain, notwithstanding the form in which they are shown in the fac-simile, the essential features of the trade-mark, and it would be a very close observer who would pay any heed to the manner in which the letters were separated.

In the case of ex parte I. M. and V. Weil, recently decided by me, I held that in my opinion a geographical word did not become a registrable trade-mark by enclosing it in a certain geometrical figure, because the geographical word still remained the essential feature of the mark. Equally so do the words

Pittsburgh Pump remain the essential feature of the mark under consideration, and the insertion of hyphens between the letters does not in my mind make the words, otherwise not a lawful trade-mark, registrable.

The decision of the examiner of trade-marks is accordingly affirmed.

(Signed) C. H. Duell,

Commissioner.

June 15, 1898.

Pittsburgh Pump remain the essential feature of the mark under consideration, and the insertion of hyphens between the letters does not in my mind make the words, otherwise not a lawful trade-mark, registrable.

The decision of the examiner of trade-marks is accordingly affirmed.

(Signed) C. H. Duell,

Commissioner.

June 15, 1898.

June 25, 1898. (Recorded Vol. 64, Page 384)

UNITED STATES PATENT OFFICE.

Ex parte George Bryner.

Trade-Mark for Eczema Remedies.

Petition.

Application for registration filed December 18, 1897, #54,753.

Attorney for applicant: O. D. Levis; associate attorney; Albert Popkins.

The petitioner admits that neither "Xzema" nor "Eczema" is registrable. Nevertheless, he claims that by hyphenating the word and printing it in the form shown in the fac-simile, wherein the letter "X" is a large capital, the letters "z e" are small capitals, and the letters "m a" in script, he imparts a characteristic to the word that makes it registrable.

I cannot agree with him. The essential feature of the mark, both to the eye and ear, is the word itself, irrespective of its spelling or the style of letters used.

In ex parte Pittsburgh Pump Co., decided June 15, 1898, it 64 MO.D.360 was held that by hyphenating the geographical and descriptive words "Pittsburgh Pump" no characteristic was imparted to them which rendered them registrable when otherwise they would not be. The ruling there set forth applies to this case, and therefore registration is refused and the decision of the examiner of trade-marks is affirmed.

(Signed) C. H. Duell.
Commissioner.

(Recorded Vol. 64, Page 384)

June 24, 1908.

UNITED STATES PATENT OFFICE.

In re: George Byron.

Trade-Mark for Dozen Remedies.

Petition.

Application for registration filed December 12, 1907, #64,752.

Attorney for applicant: O. D. Levin; associate attorney; Albert Poykin.

The petitioner admits that neither "Xzema" nor "Nozema" is registrable. Nevertheless, he claims that by hyphenating the word and putting it in the form shown in the fac-simile, wherein the letter "X" is a large capital, the letters "z e" are small capitals, and the letters "m a" in script, he imparts a characteristic to the word that makes it registrable.

I cannot agree with him. The essential feature of the mark, both to the eye and ear, is the word itself, irrespective of the specific or the style of letters used.

In ex parte Pittsburgh Pump Co., decided June 12, 1908, 134 TM.O.G. 360, it was held that by hyphenating the geographical and descriptive words "pittsburgh Pump" no characteristic was imparted to them which rendered them registrable when otherwise they would not be. The ruling there is not forth applies to this case, and therefore registration is refused and the decision of the examiner of trade-marks is affirmed.

(Stamped) C. H. Duell,
Commissioner.

June 24, 1908

84.09.310

(Recorded Vol. 64, page 397.)

June 20, 1898.

M.H.

UNITED STATES PATENT OFFICE.

Ex parte The Dunkley Celery and Preserving Company.

Trade-Mark for Celery Compounds.

84 09.310

Petition.

Application for registration filed April 6, 1898; No.55,550.

Mr. Fred L. Chappell for applicant.

Applicant seeks to register as a trade-mark for mixtures of fluids or liquids containing celery or the extract or flavor of the same, a square bottle. This bottle is of peculiar and, so far as appears, of original form. The examiner of trade-marks having refused the registration, his action is now before me by petition for review.

The rule of law applicable to the subject in controversy is, as I view it, thus correctly laid down:

"The form of an article or package alone can rarely be the subject of trade-mark protection. If the form is peculiar enough to be protected for itself alone, it may be the subject of a design patent."

26 Am. and Eng. Encyc. of Law, 311.

The decisions of the courts sustaining this proposition have been very uniform, and in only one or two instances do I find that a court of competent jurisdiction has otherwise held, and such exception rather proves the rule than otherwise.

(Recorded Vol. 61, page 297.)

...une 20, 1888. ...M.H.

UNITED STATES PATENT OFFICE.

Ex parte The Dunkley Celery and Preserving Company.

Trade-Mark for Celery Compounds.

Petition.

...pplication for registration filed April 6, 1888; No. 55,850.

...r. Fred L. Chappell for applicant.

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...ce Am. and Eng. Encyc. of Law, 811.

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Counsel for applicant in a well-considered argument, fortifie by a brief, as well as a supplemental brief, has so strenuously contended for the right of registration that I have considered it advisable at this time to refer to a few of the many cases which support the rule heretofore referred to, in order that the positio taken by the office be shown to be founded on principle and fortified by precedent.

The Court of Appeals of the State of New York, in Fischer v. Blank, 138 N.Y., 245, said:

"The plaintiffs have no proprietary right to this form of package, and are not entitled to its exclusive use. It is a convenient form in which to enclose merchandise of this character, when offered for sale, and all who are engaged in the traffic in the commodity, are free to use it without incurring the risk of liability for an infringement of the plaintiffs' rights. It has been too often reiterated to be now questioned that, under ordinar circumstances, the adoption of packages of a peculiar form and color alone, having no distinguishing symbol, letter, sign, or seal, is not sufficient to constitute a trade-mark."

In Hoyt v. Hoyt, 143 Pa. St., 623, this statement may be found:

"The trade-mark must relate to and distinguish the goods to which it is applied. For this reason, among others, the size, or shape, or mode of construction of a box, barrel, bottle, or package in which goods may be put, is not a trade-mark. If there is any new and useful combination in the construction of such box or package, it should be patented as an invention, if the owner wishes to prevent others from using it; but such package cannot be registered as a trade-mark."

The decisions of the federal courts have been quite uniform in holding that the form of a package or article is not the subjec

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In Hoyt v. Hoyt, 145 Pa. St., 632, this statement may be found:

"The trade-mark must relate to and distinguish the goods to which it is applied. For this reason, among others, the size, or shape, or mode of construction of a box, barrel, bottle, or package in which goods may be put, is not a trade-mark. If there is any new and useful combination in the construction of such box or package, it should be patented as an invention, if the owner wishes to prevent others from using it; but such package cannot be registered as a trade-mark."

The decisions of the federal courts have been quite uniform in holding that the form of a package or article is not the subject

of lawful trade-mark protection.

The United States Circuit Court for the Southern District of New York, in Harrington v. Libby, 12 O.G., 188, hold that a tin pail used as a collar box was not the subject of a lawful trade-mark. The criticism of the court on the attempt of manufacturers to appropriate the exclusive use of packages for special purposes is thus stated:

"The question whether any one can seize upon such an article and make title to its exclusive use for a special purpose by calling it a trade-mark, must be far from clear in favor of the claimant. The forms and materials of packages to contain articles of merchandise, if such claims should be allowed, would be rapidly taken up and appropriated by dealers, until some one, bolder than the others, might go to the very root of things, and claim for his goods the primitive brown paper and tow string as a peculiar property. It will be observed that it is not a mark at all which is claimed, but the whole enveloping package, the whole surface of which is covered by the ornamental pattern. There is no name, no symbol, no assertion of origin or ownership."

In Adams v. Heisel, 31 Fed. Rep., 279, it was said:

"It is well settled that a person cannot obtain the monopoly incident to a trade-mark by the mere form of a vendible commodity that may be adopted."

In Moorman v. Hoge, 2 Sawyer, 78, the court said:

"I find no case where the vessel, box, package, or whatever contained the article, has been held to constitute a trade-mark by reason of its peculiar form or dimensions, independent of any symbol, figure or device impressed upon, or connected with it for a trade-mark."

The decisions in the Patent Office in the main sustain the position here taken.

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The United States Circuit Court for the Southern District of New York, in Hartington v. Libby, 12 O.G., 188, held that a tin pail used as a collar box was not the subject of a lawful trade-mark. The criticism of the court on the attempt of manufacturers to appropriate the exclusive use of packages for special purposes is thus stated:

"The question whether any one can seize upon such an article and make title to its exclusive use for a special purpose by calling it a trade-mark, must be far from clear in favor of the claimant. The forms and materials or packages to contain articles of merchandise, if such claims should be allowed, would be rapidly taken up and appropriated by dealers, until some one, bolder than the others, might go to the very root of things, and claim for his goods the primitive brown paper and tow string as a peculiar property. It will be observed that it is not a mark at all which is claimed, but the whole enveloping package, the whole surface of which is covered by the ornamental pattern. There is no name, no symbol, no description of origin or ownership."

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The decisions in the Patent Office in the main sustain the position here taken.

In ex parte Kane & Co., 9 O.G., 105, registration of "galvanized hoops placed on a barrel of dark color" as a trade-mark for liquors to be placed in the barrels, was refused.

In ex parte Jacob Gordon, 12 O.G., 517, the Commissioner said "Thus the box, barrel, or wrapper containing merchandise whatever its form, cannot, per se, be the trade-mark."

Applicant's counsel argues most earnestly that Cook & Bernheimer Co. v. Ross et al, 73 Fed. Rep., 203, is an authority justifying the registration. I think he misapprehends the scope of the decision in that case. It is true that the court enjoined the defendants from putting up a popular brand of whiskey in bottles the same as used by plaintiff, the bottles being of a peculiar shape, originally devised by the complainant. The court expressly founded its judgment upon the fact that the act of the defendants was "unfair competition within the authorities, and should be restrained." Nowhere is it stated or intimated by the court that the shape of the bottle is, per se, a lawful trade-mark. The court simply affirmed the doctrine laid down in Moxie Nerve Food Co. v. Baumbach, 32 Fed. Rep., 305, that where a manufacturer of a hitherto unknown fluid or beverage places the fluid before the public in a form of bottle not theretofore used for bottling the same fluid, another manufacturer ought to be enjoined from embarrassing the former and misleading the public by using the same bottle in putting up his preparation.

In ex parte Nana & co., 2 O.G., 105, registration of "gal-
vanized hoops placed on a barrel of dark color" as a trade-mark
for liquors to be placed in the barrels, was refused.

In ex parte Jacob Gordon, 12 O.G., 317, the Commissioner said
"Thus the box, barrel, or wrapper containing merchandise to
whatever its form, cannot, per se, be the trade-mark."

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heimer Co. v. Rose et al, 73 Fed. Rep., 203, is an authority jus-
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shape, originally devised by the complainant. The court expressly
founded its judgment upon the fact that the act of the defendants
was "unfair competition within the authorities, and should be re-
strained." Nowhere is it stated or intimated by the court that
the shape of the bottle is, per se, a lawful trade-mark. The court
simply affirmed the doctrine laid down in Moxie Nerve Food Co. v.
Beardsley, 32 Fed. Rep., 205, that where a manufacturer of a bitter
to unknown fluid or beverage places the fluid before the public
in a form of bottle not theretofore used for bottling the same
fluid, another manufacturer ought to be enjoined from embarrassing
the former and misleading the public by using the same bottle in
putting up his preparation.

Without doubt, if applicant's bottles become the identifying mark by which his preparations are known, the courts will protect him against any rival manufacturer who copies the form of bottle, but that will be done on the ground of unfair competition and not because the bottle is the subject for a lawful trade-mark.

The decision of the examiner of trade-marks in refusing registration is affirmed.

(Signed) C. H. Duell,

Commissioner.

June 25, 1898.

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The decision of the examiner of trade-marks in refusing
egistration is affirmed.

(Signed) C. H. Duell,

Commissioner.

June 25, 1898.

(Recorded Vol. 64, page 475)

UNITED STATES PATENT OFFICE.

Ex parte Christopher H. Miller.

Trade-Mark for Candy.

Petition.

Application for registration filed May 2, 1898; serial No.55,707.

Mr. Jas. J. Sheehy for applicant.

This is a petition from the action of the examiner of trade-marks refusing to register the word-symbol "Happy Jack" as a trade-mark for candy.

The ground on which registration should be refused in this case is clearly stated in ex parte Coon, 58 O.G., 946. The determining reason is thus stated:

"Whenever in the opinion of the Office the thing presented for registry as a Trade-Mark is so nearly like some prior Trade-Mark as to be likely to lead to mistake or confusion, the Office ought to decline to register."

The impression that confusion and mistake would arise through the use of "Happy Jack" in view of the prior use of "Cracker Jack" is so strong that argument of counsel has not shaken it. See also

(Recorded Vol. 64, page 475)

UNITED STATES PATENT OFFICE.

Ex parte Christopher H. Miller.

Trade-Mark for Candy.

Petition.

Application for registration filed May 8, 1899; serial No. 55,707.

Mr. Jas. J. Bagley for applicant.

This is a petition from the action of the examiner of trade-marks refusing to register the word-symbol "Happy Jack" as a trade-mark for candy.

The ground on which registration should be refused in this case is clearly stated in ex parte Coon, 58 O.G., 940. The determining reason is thus stated:

"Whenever in the opinion of the Office the thing presented for registry as a Trade-Mark is so nearly like some prior Trade-Mark as to be likely to lead to mistake or confusion, the Office ought to decline to register."

The impression that confusion and mistake would arise through the use of "Happy Jack" in view of the prior use of "Crooker Jack" is so strong that argument of counsel has not shaken it. See also

Gold Leaf Baking Powder Co., 58 MS.Dec., 179, and decisions cited by the examiner.

The decision of the examiner is affirmed.

(Signed) C. H. Duell,

Commissioner.

July 15, 1898.

Gold Leaf Baking Powder Co., 58 MS.Dec., 179, and deolsions cited by the examiner.

The decision of the examiner is affirmed.

(Signed) C. H. Duell,

Commissioner.

July 15, 1898.

UNITED STATES PATENT OFFICE.

Ex parte James E. McWilliam.

Trade-Mark for Horse Blankets.

Petition.

Application for registration filed June 24, 1898; serial No.54,977.

Messrs. Southgate & Southgate for applicant.

Registration of the word-symbol "None Such" refused.

"Examiner affirmed July 27, 1898.

A. P. Greeley,

Acting Commissioner."

UNITED STATES PATENT OFFICE.

Ex parte James K. McWilliam.

Trade-Mark for Horse Blankets.

Petition.

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pplication for registration filed June 24, 1898; serial No.64,977.

leare. Southgate & Southgate for applicant.

Registration of the word-symbol "Home Brand" returned.

"Examiner affirmed July 27, 1898.

A. P. Greeley,

Acting Commissioner."

July 28, 1898. (Recorded Vol. 65, page 33) S.E.T.

UNITED STATES PATENT OFFICE.

Ex parte Iowa Soap Company.

Trade-Mark for Toilet Soap.

Petition.

Application for registration filed November 15, 1897, No.54,579.

Messrs. Edson Bros. for applicant.

This is a petition from the action of the examiner of trade-marks refusing to register the numeral "4" as a trade-mark for soap.

The application as filed set up as the essential feature the word and numeral "Big 4" and was rejected on the mark "Big 6," applied to the same class of goods previously registered by Lautz Bros. and Company. In view of this rejection and in order to avoid the reference, the application was so amended as to set up that the essential feature of the applicant's mark is the numeral "4", but the fac-simile remains the same as originally presented and includes the mark "Big 4."

The amendment to the specification was made in conformity with a suggestion contained in an office letter, but since the fac-simile was not changed, registration was still refused on the ref-

July 28, 1885. (Recorded Vol. 86, page 22) S.M.T.

UNITED STATES PATENT OFFICE.

Ex parte Iowa Soap Company.

Trade-Mark for Toilet Soap.

Petition.

Application for registration filed November 13, 1884, No.54,572.

Messrs. Edson Bros. for applicant.

This is a petition from the action of the examiner of trade-marks refusing to register the numeral "4" as a trade-mark for soap.

The application as filed set up as the essential feature the word and numeral "Big 4" and was rejected on the mark "Big 8," applied to the same class of goods previously registered by Lamb Bros. and Company. In view of this rejection and in order to avoid the reference, the application was so amended as to set up that the essential feature of the applicant's mark is the numeral "4", but the two-stamile remains the same as originally presented and includes the mark "Big 4."

The amendment to the specification was made in conformity with a suggestion contained in an office letter, but since the two-stamile was not changed, registration was still refused on the ref-

erence cited. The applicant states that he is willing to amend the drawing, but the examiner holds under the authority of ex parte Gold Leaf Baking Powder Company, 58 MS.Dec., 179, that the mark would not be registrable, even if the word "Big" were omitted from the fac-simile since it is to be presumed that the applicant would continue to use the mark as originally disclosed.

The trade-mark "Big 4" is so nearly like the mark "Big 5" as to deceive the ordinary purchaser and is not registrable thereover. It must be held, furthermore, that so long as the fac-simile discloses the mark "Big 4", the word "Big" is an essential part of the mark without regard to what the applicant states in the specification is the essential feature. The applicant discloses the mark which he alleges that he has used and in comparing it with marks previously registered in order to determine whether it is registrable thereover, the office must determine for itself what features of it would attract the attention of the ordinary purchaser. The examiner was therefore right in refusing to register the mark in this case.

Since, however, the applicant has expressed a willingness to amend his fac-simile by omitting the word "Big", the effect of such action must now be considered. The decision in ex parte Gold Leaf Baking Powder Company (cited above), while reaching the proper conclusion on this subject is not in my opinion based upon the

erence cited. The applicant states that he is willing to amend the drawing, but the examiner holds under the authority of ex parte Gold Leaf Baking Powder Company, 68 MS.Dec., 179, that the mark would not be registrable, even if the word "Big" were omitted from the Tao-amilo since it is to be presumed that the applicant would continue to use the mark as originally disclosed.

The trade-mark "Big 4" is so nearly like the mark "Big 5" as to deceive the ordinary purchaser and is not registrable thereover. It must be held, furthermore, that so long as the Tao-amilo discloses the mark "Big 4", the word "Big" is an essential part of the mark without regard to what the applicant states in the specification is the essential feature. The applicant discloses the mark which he alleges that he has used and in comparing it with marks previously registered in order to determine whether it is registrable thereover, the office must determine for itself what features of it would attract the attention of the ordinary purchaser. The examiner was therefore right in refusing to register the mark in this case.

Since, however, the applicant has expressed a willingness to amend his Tao-amilo by omitting the word "Big", the effect of such action must now be considered. The decision in ex parte Gold Leaf Baking Powder Company (cited above), while reaching the proper conclusion on this subject is not in my opinion based upon the

proper grounds. This office has no right to presume what the applicant will do in future and upon such mere presumption deny him any substantial right, but must base its actions upon what he has done in the past and upon the showing made determine whether he has complied with the statute so as to entitle him to have his mark registered.

The statute requires that in order to be registrable the trade-mark shall have been lawfully used by the applicant in foreign commerce or commerce with Indian tribes and that the application shall be accompanied by a fac-simile of the mark which has been so used. The right to registration is derived from this use and aside from the strict requirement of the statute, it is obvious that in order that the office may determine the applicant's right to registration he should disclose the thing which he has actually used and not merely some feature of it which he may desire to use in future. If some essential feature of a mark actually in use is omitted the mark becomes a different trade-mark and its date of use commences at the time that the omission was made. The difference being essential the marks are as separate and distinct as if they did not include common features. In such case the adoption and use of the original mark does not warrant the registration of a part thereof, but such part must depend for its right to regis-

part thereof, but such part must depend for its right to regis-

tration upon its own separate adoption and use.

It follows therefore that an applicant cannot omit essential features of his trade-mark as originally disclosed without destroying the identity of that mark and producing a new mark. Being a new trade-mark it must stand upon its own merits and be presented for registration in a separate application.

In the present case it was held by the examiner that the word "Big" is an essential feature of the mark and that its omission would so change the mark as to avoid anticipation by the reference cited. In other words, that the new mark is a different trade-mark from that originally disclosed. This holding was acquiesced in by the applicant since he canceled the word "Big" from his description in view of this statement by the examiner.

The proposed amendment of the fac-simile would undoubtedly change it materially and produce a new trade-mark and therefore it should not be permitted.

The petition is denied.

(Signed) A. P. Greeley,

Acting Commissioner

August 8, 1898.

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It follows therefore that an applicant cannot omit essential features of his trade-mark as originally disclosed without destroying the identity of that mark and producing a new mark. Being a new trade-mark it must stand upon its own merits and be presented for registration in a separate application.

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The proposed amendment of the two-similar would undoubtedly change it materially and produce a new trade-mark and therefore it should not be permitted.

The petition is denied.

(Signed) A. P. Greeley,

Acting Commissioner.

August 8, 1899.

September 7, 1898. M.H.

(Recorded Vol. 65, page 177)

UNITED STATES PATENT OFFICE.

Ex parte Horlick's Food Company.

Trade-Mark for Food Preparations.

Petition.

Application for registry filed March 29, 1897, No.53,270.

Mr. H. G. Underwood for petitioner.

The examiner having refused to register the words "Malted Milk" as a trade-mark for a food preparation for infants and invalids, applicant seeks by petition to review his action.

The examiner has refused registry upon the following grounds: first, because the words "Malted Milk" are descriptive of the article to which they are applied, and, second, because applicant has certain patents for the substance to which he applies the trade-mark.

The decisions of the United States Supreme Court are controlling upon this office in its practice relative to the registry of trade-marks. By the decisions of that tribunal two propositions at least have been well established, first, that words which are merely descriptive of the character, qualities, or composition of

September 7, 1898.

(Recorded Vol. 66, page 177)

UNITED STATES PATENT OFFICE.

Ex parte Hortick's Food Company.

Trade-Mark for Food Preparations.

Petition.

Application for registry filed March 29, 1897, No.52,270.

Mr. H. G. Underwood for petitioner.

The examiner having refused to register the words "Malted Milk" as a trade-mark for a food preparation for infants and invalids, applicant seeks by petition to revive his action.

The examiner has refused registry upon the following grounds: first, because the words "Malted Milk" are descriptive of the article to which they are applied, and, second, because applicant has certain patents for the substance to which he applies the trade-mark.

The decisions of the United States Supreme Court are controlling upon this office in its practice relative to the registry of trade-marks. By the decisions of that tribunal two propositions at least have been well established, first, that words which are merely descriptive of the character, qualities, or composition of

an article cannot be monopolized as a trade-mark, and, second, that where during the life of a monopoly created by a patent an arbitrary name has by consent, either express or tacit, of the inventor become the identified or generic name of the thing patented, this name passes to the public with the cessation of the monopoly which the patent created. Brown Chemical Co. v. Meyer, 139 U.S., 540; Singer Mfg. Co. v. June Mfg. Co., 163 U.S., 169.

This office has recently ruled that, in view of the fact that a patent was granted for a limited term, while a trade-mark once registered may be re-registered without limit, the generic name of a patented thing ought not to be registered as a trade-mark. Ex parte F. H. Gilson Co., 83 O.G., 1992. The question for consideration herein, therefore, is one in fact. Applicant admits that "No one disputes the fact that both malt and wheat have been used, both with and without the addition of milk, in the manufacture of prepared foods," but strenuously denies that the words sought to be registered are descriptive, because the words cover an impossible compound, and therefore are purely arbitrary; that the words are meaningless, because it is impossible to malt milk.

I think applicant has lost sight of the fact that the term "malted" includes not only that which has been converted into malt, but that which has been acted upon by malt. That milk has been acted upon by malt does not admit of successful contradiction. It is now well known that diastase is not the only ferment con-

an article cannot be monopolized as a trade-mark, and, second, that where during the life of a monopoly created by a patent an arbitrary name has by consent, either express or tacit, of the inventor become the identified or generic name of the thing patented, this name passes to the public with the cessation of the monopoly which the patent created. Brown Chemical Co. v. Meyer, 139 U.S., 540; Singer Mfg. Co. v. June Mfg. Co., 163 U.S., 169.

This office has recently ruled that, in view of the fact that a patent was granted for a limited term, while a trade-mark once registered may be re-registered without limit, the generic name of a patented thing ought not to be registered as a trade-mark. Ex parte P. H. Gilson Co., 85 O.G., 1982. The question for consideration herein, therefore, is one in fact. Applicant admits that "No one disputes the fact that both malt and wheat have been used, both with and without the addition of milk, in the manufacture of prepared foods," but strenuously denies that the words sought to be registered are descriptive, because the words cover an impossible compound, and therefore are purely arbitrary; that the words are meaningless, because it is impossible to malt milk.

I think applicant has lost sight of the fact that the term "malted" includes not only that which has been converted into malt, but that which has been acted upon by malt. That milk has been acted upon by malt does not admit of successful contradiction. It is now well known that diastase is not the only ferment con-

tained in malt, but that there is another which has been called "peptose", which tends to convert proteids of meat (albuminous substances) into peptones. That milk is susceptible to the action of malt, the same as meat, is, I believe, well established.

Without entering into any elaborate argument to prove the statements above made, attention is called to "A Handbook of Industrial Organic Chemistry," by Sadtler, editions of 1891 and 1895, special reference being made to the clause beginning with line 18, page 180, of the edition of 1891, and page 190 of the edition of 1895. See also Watts' Dictionary of Chemistry, Vol. 2, page 645, and British Patent No.14,459 of 1887, lines 3 to 6, inclusive, page 2.

"Iron Bitters" would not have been held descriptive if literally read, but the court, speaking of these words, said they are "so far indicative of the ingredients, characteristics and purposes of the plaintiff's preparation as to fall within the scope of these decisions."

I do not think that the petitioner's contention that the words cover an impossible compound is borne out by the facts. In my opinion, anyone putting on the market a preparation wherein milk has been subjected to the action of malt may refer to his article as "malted milk", taking care, however, in using the words not to deprive others of their right or to deceive the public.

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"Iron Bitters" would not have been held descriptive if literally read, but the court, speaking of these words, said they are "so far indicative of the ingredients, characteristics and purposes of the plaintiff's preparation as to fall within the scope of these definitions."

I do not think that the petitioner's contention that the words cover an impossible compound is borne out by the facts. In my opinion, anyone putting on the market a preparation wherein milk has been subjected to the action of malt may refer to his article as "malted milk", taking care, however, in using the words not to deprive others of their right or to deceive the public,

and at the same time accompanying the words with indications that the article put upon the market is not the manufacture of any other party employing the same term.

Believing that the words are so far indicative of the ingredients and characteristics of petitioner's preparation as to be descriptive, I am compelled to hold that they are not properly registrable.

It will be unnecessary from the view which I take of the case to pass upon the second ground of refusal to register the words. The examiner has cited two patents and has referred to them as "applicant's patents." In reply thereto it is stated that the petitioner is not the owner of either of the patents referred to by the examiner. An examination of the records of this office, however, shows that the title to the 1875 patent is in Horlick's Food Company, of Racine, Wisconsin. In reference to the second patent, it is somewhat suggestive that the applicant states that it commenced the use of the words in question in January, 1882, which was just about the time when the application for the second patent referred to by the examiner was filed, and the patent relates to a food for infants and a process of preparing the same, while this trade-mark is sought for a food preparation for infants and invalids. I apprehend that in order to bring the case within the authority of the Singer Mfg. Co. v. June Mfg. Co., supra, it is not necessary that the patents should be owned by the party put-

and at the same time accompanying the words with indications that the article put upon the market is not the manufacture of any other party employing the same term.

Believing that the words are so far indicative of the ingredients and characteristics of petitioner's preparation as to be descriptive, I am compelled to hold that they are not properly registrable.

It will be unnecessary from the view which I take of the case to pass upon the second ground of refusal to register the words. The examiner has cited two patents and has referred to them as "applicant's patents." In reply thereto it is stated that the petitioner is not the owner of either of the patents referred to by the examiner. An examination of the records of this office, however, shows that the title to the 1875 patent is in Horlick's Food Company, of Racine, Wisconsin. In reference to the second patent, it is somewhat suggestive that the applicant states that it commenced the use of the words in question in January, 1883, which was just about the time when the application for the second patent referred to by the examiner was filed, and the patent related to a food for infants and a process of preparing the same, while this trade-mark is sought for a food preparation for infants and invalids. I apprehend that in order to bring the case within the authority of the Singer Mfg. Co. v. June Mfg. Co., supra, it is not necessary that the patents should be owned by the party put-

ting out the article under the identifying or generic name, but that it is sufficient if such name is given to the patented article with the consent, either express or tacit, of the inventor. It is not necessary, however, to decide that question at this time, nor to institute an investigation into the fact of what connection, if any, there is between the patents referred to and the preparation put out by petitioner under the term "Malted Milk."

The action of the examiner in refusing registry is affirmed.

(Signed) C. H. Duell,

Commissioner.

September 12, 1898.

ting out the article under the identifying or generic name, but that it is sufficient if such name is given to the patented article with the consent, either express or tacit, of the inventor. It is not necessary, however, to decide that question at this time, nor to institute an investigation into the fact of what connection, if any, there is between the patents referred to and the preparation put out by petitioner under the term "Malted Milk."

The action of the examiner in refusing registry is affirmed.

(Signed) C. H. Duell,

Commissioner.

September 12, 1898.

84.09.1871

Sep. 8, 1898. M.H.

(Recorded Vol. 65, page 180)

UNITED STATES PATENT OFFICE.

Ex parte The Olive Wheel Company.

Trade-Mark for Bicycles.

Petition.

Application for registry filed April 16, 1898, No.55,622.

Messrs. E. Laass & Co. for petitioner.

Applicant seeks to register as a trade-mark for bicycles the word "Olive", and has taken an appeal from the action of the examiner in refusing registration. The grounds given by the examiner for refusing to register the mark are that the word is the salient feature of applicant's name, and also that it is an ordinary surname.

Irrespective, however, of these objections, an examination of the record discloses a fatal objection to the registry. It is stated that the word Olive simply indicates the color of the bicycles manufactured by the applicant. It is well settled that color alone does not constitute a trade-mark. If a manufacturer were allowed to monopolize by trade-mark the color of the package in which his goods might be wrapped or the color of the paint or

(Recorded Vol. 65, page 180)

UNITED STATES PATENT OFFICE.

In parte The Olive Wheel Company.

Trade-Mark for Bicycles.

Petition.

Application for registry filed April 16, 1898, No. 25,622.

Messrs. E. Lamb & Co. for petitioner.

Applicant seeks to register as a trade-mark for bicycles the word "Olive", and has taken an appeal from the action of the examiner in refusing registration. The grounds given by the examiner for refusing to register the mark are that the word is the salient feature of applicant's name, and also that it is an ordinary surname.

Irrespective, however, of these objections, an examination of the record discloses a fatal objection to the registry. It is stated that the word Olive simply indicates the color of the bicycles manufactured by the applicant. It is well settled that color alone does not constitute a trade-mark. If a manufacturer were allowed to monopolize by trade-mark the color of the package in which his goods might be wrapped or the color of the paint or

enamel applied to them, then legitimate competition would be seriously interfered with. A manufacturer of bicycles may paint or enamel his bicycles any color which he may select, but such selection will not take that color from out the public domain, and any other manufacturer will have an equal right to use the same color. This right being a common one, no manufacturer can exclusively hold the right to any color as against others, and if one paints or enamels his bicycles white, yellow, blue, green, or olive, he has a right to designate them by the color employed. Attention is called to ex parte Landreth, 31 O.G., 1441, and Fleischmann v. Starkey, 26 Fed. Rep., 127.

The examiner being correct in his action, it is affirmed.

(Signed) C. H. Duell,

Commissioner.

September 13, 1898.

owner applied to them, then legitimate competition would be seriously interfered with. A manufacturer of bicycles may paint or enamel his bicycles any color which he may select, but such selection will not take that color from out the public domain, and any other manufacturer will have an equal right to use the same color. This right being a common one, no manufacturer can exclusively hold the right to any color as against others, and if one paints or enamels his bicycles white, yellow, blue, green, or olive, he has a right to designate them by the color employed. Attention is called to ex parte Landreth, 21 O.G., 1441, and Fleischmann v. Starkey, 25 Fed. Rep., 137.

The examiner being correct in his action, it is affirmed.

(Signed) C. H. Duell,

Commissioner.

September 13, 1882.

(Recorded Vol. 65, page 181)

UNITED STATES PATENT OFFICE.

Ex parte Phelps, Brace & Company.

Trade-Mark for Goods Packed in Receptacles.

Petition.

Application for registry filed November 22, 1897; No.54,634.

Mr. L. S. Bacon for petitioner.

"The record in this case discloses that the word 'Tiger' as a trade-mark for oysters, fruit, and vegetables has been heretofore registered, and the statement forming a part of said registry discloses that the mark is or may be employed in connection with a representation of a tiger's head and various accessories, printed in colors, which latter may be varied at pleasure or omitted.

"It is thought that this case falls within the authority of ex parte Meriwether & Co., 83 O.G., 1515, and ex parte Kaufmann & Blache, 84 O.G., 145, and cases therein cited.

The action of the examiner is affirmed."

(Signed) C. H. Duell,

Commissioner.

September 13, 1898.

(Recorded Vol. 65, page 181)

UNITED STATES PATENT OFFICE.

Ex parte Pholps, Brose & Company.

Trade-Mark for Goods Packed in Receptacles.

Petition.

Application for registry filed November 22, 1897; No.64,654.

Mr. L. S. Bacon for petitioner.

"The record in this case discloses that the word 'Tiger' as a trade-mark for oysters, fruit, and vegetables has been heretofore registered, and the statement forming a part of said registry discloses that the mark is or may be employed in connection with a representation of a tiger's head and various accessories, printed in colors, which latter may be varied at pleasure or omitted.

"It is thought that this case falls within the authority of Ex parte Merriweather & Co., 83 O.G., 1813, and Ex parte Kaufmann & Bloche, 84 O.G., 146, and cases therein cited.

The action of the examiner is affirmed."

(Signed) C. M. Duell,

Commissioner.

September 15, 1898.

(Recorded Vol. 65, page 182)

UNITED STATES PATENT OFFICE.

Ex parte Lexington Roller Mills Company.

Trade-Mark for Corn Meal and Flour.

Petition.

Application for registry filed February 14, 1898; No.55,130.

Messrs. Wilkinson & Fisher for petitioner.

The objection of the examiner taken to the word "Cherokee" is thought, under all the circumstances, to be correct, and his action in rejecting the application as presented is affirmed upon that ground. However, it is thought that if the word Cherokee be omitted from the statement of the essential features the mark is registrable notwithstanding the references cited. If applicant amends his statement by making the essential feature "the representation of the head of an Indian and an ear of corn, arranged as shown," and also cancels the word "usually" from the body of the description of the trade-mark, the mark may be registered.

(Signed) C. H. Duell,

Commissioner.

September 13, 1898.

(Recorded Vol. 65, page 182)

UNITED STATES PATENT OFFICE.

Ex parte Lexington Roller Mills Company.

Trade-Mark for Corn Meal and Flour.

Petition.

Application for registry filed February 14, 1898; No. 55,150.

Messrs. Wilkinson & Fisher for petitioner.

The objection of the examiner taken to the word "Cherokee" is thought, under all the circumstances, to be correct, and his action in rejecting the application as presented is affirmed upon that ground. However, it is thought that if the word Cherokee be omitted from the statement of the essential features the mark is registrable notwithstanding the references cited. If applicant amends his statement by making the essential feature "the representation of the head of an Indian and an ear of corn, arranged as shown," and also cancels the word "usually" from the body of the description of the trade-mark, the mark may be registered.

(Signed) C. H. Duell,

Commissioner.

September 15, 1898.

83.O.G.148

Sept. 14, 1898. (Recorded Vol.65, page 183) M.H.

UNITED STATES PATENT OFFICE.

Ex parte Flint and Walling Manufacturing Company.

Trade-Mark for Agricultural and Domestic Implements.

Petition.

Application for registry filed April 20, 1898, No.55,646.

Messrs. Chapin and Denny and Mr. F. A. Lehmann for applicant.

Applicant seeks to register as a trade-mark for wind-mills and tanks the pictorial symbol of a star with a wind-mill in the center. The examiner has rejected the application upon the registered mark of O. G. Stowell, No.15,027, registered March 9, 1886, for wind-mills and tanks, the essential feature of which is the word-symbol "U. S. Star." There is also shown in the fac-simile of the registered trade-mark and referred to in the statement the symbol of a star.

It is strenuously contended by the applicant that the rejection is not well founded, because there is an essential difference between the marks and the statute only prohibits the registry of a trade-mark identical with a prior registered mark. The prohibition is broader than stated by applicant's counsel, for under the statute no alleged trade-mark shall be registered -

M.H.

pt. 14, 1898. (Recorded Vol. 66, page 183)

UNITED STATES PATENT OFFICE.

Ex parte Flint and Walling Manufacturing Company.

Trade-Mark for Agricultural and Domestic Implements.

Petition.

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s broader than stated by applicant's counsel, for under the statute
no alleged trade-mark shall be registered -

"which so nearly resembles some other person's lawful trade-mark as to be likelt to cause confusion or mistake in the mind of the public, or to deceive purchasers."

Notwithstanding the applicant's argument, I cannot escape the conviction that the office ought not to register a mark so similar to the one already registered for the same class of goods. If the registered mark set forth that the essential feature was the word or symbol of a star, irrespective of any accessories, the question would be entirely free from doubt.

It is quite true that a court with proper evidence before it might come to the conclusion that wind-mills and tanks put out under the registered mark were known under the designation "U. S." rather than "Star", and that the articles put on the market by these rival manufacturers were so distinguished one from the other by the acts of the parties and their methods of advertising the same that the public was not deceived and readily recognized the distinction between the marks. At first thought, I was so inclined to hold, but after more mature consideration I do not think the mark should be registered. It is a border line case, but I think the benefit of the doubt, so far as this office is concerned, should be given to the owner of the registered mark.

The action of the examiner is therefore affirmed.

(Signed) C. H. Duell,

Commissioner.

September 14, 1898.

"which so nearly resembles some other person's lawful trade-
mark as to be likely to cause confusion or mistake in the mind of
the public, or to deceive purchasers."

Notwithstanding the applicant's argument, I cannot escape the
conviction that the office ought not to register a mark so similar
to the one already registered for the same class of goods. If the
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more mature consideration I do not think the mark should be regis-
tered. It is a border line case, but I think the benefit of the
doubt, so far as this office is concerned, should be given to the
owner of the registered mark.

The action of the examiner is therefore affirmed.

(Signed) C. H. Duell,
Commissioner.

September 14, 1898.

83.09.148

Sept. 14, 1898. (Recorded Vol. 65, page 184) M.H.

UNITED STATES PATENT OFFICE.

Ex parte Flint and Walling Manufacturing Company.

Trade-Mark for Agricultural and Domestic Implements.

Petition.

Application for registry filed April 20, 1898, No.55,647.

Messrs. Chapin & Denny and Mr. F. A. Lehmann for applicant.

Applicant petitions from the refusal of the examiner to register as a trade-mark for wind-mills and tanks a symbol of a five-pointed star, with the letters of the word "STEEL" inserted between the rays or points, and the monogram "F W" and the word "Co." placed upon a small five-pointed star which forms the center of the larger one, and which two stars, the monogram, and the word "steel" arranged around the circumference of the larger star, form the material parts of the trade-mark.

This mark is rejected on the prior registration of O. G. Stowell, No.13, 097, March 9, 1886, for wind-mills and tanks, the essential features of which mark are the letters "U. S. and the word Star, or the symbol of a star."

The action of the examiner in refusing registration must be affirmed, for the reasons stated in the decision on the appeal of this applicant, in application serial No.55,646, this day rendered.

(Signed) C. H. Duell,
Commissioner.

September 14, 1898.

Sept. 14, 1898. (Recorded Vol. 85, page 184)

UNITED STATES PATENT OFFICE.

In parte Flint and Walling Manufacturing Company.

Trade-Mark for Agricultural and Domestic Implements.

Petition.

Application for registry filed April 20, 1898, No.55,647.

Messrs. Chapin & Denny and Mr. P. A. Leimann for applicant.

Applicant petitions from the refusal of the examiner to register as a trade-mark for wind-mills and tanks a symbol of a five-pointed star, with the letters of the word "STEEL" inserted between the rays or points, and the monogram "F W" and the word "Co." placed upon a small five-pointed star which forms the center of the larger one, and which two stars, the monogram, and the word "steel" arranged around the circumference of the larger star, form the material parts of the trade-mark.

This mark is rejected on the prior registration of O. G. Stowell, No.15,027, March 9, 1886, for wind-mills and tanks, the essential features of which mark are the letters "U. S. and the word Star, or the symbol of a star."

The action of the examiner in refusing registration must be affirmed, for the reasons stated in the decision on the appeal of this applicant, in application serial No.55,646, this day rendered.

(Signed) C. H. Duell,
Commissioner.

September 14, 1898.

(Recorded Vol. 65, page 185)

UNITED STATES PATENT OFFICE.

Ex parte Schandein & Lind.

Trade-Mark for Toilet Articles.

Petition.

Application for registry filed April 5, 1898; serial No.55,547.

Messrs. Wiedersheim & Fairbanks for applicants.

"The action of the examiner in refusing registration of the words "Cuban Violets", upon the ground that they are either descriptive or deceptive in character, seems to be well founded.

"This case comes within the ruling of ex parte DeMoville & Co., 68 MS. Dec., 14. In that case registration of the words "Crushed Roses" was refused. The reasoning in that case applies so directly to this, that nothing would be gained by a lengthy discussion of the question.

"The action of the examiner is affirmed."

(Signed) C. H. Duell,

Commissioner.

September 14, 1898.

(Recorded Vol. 85, page 185)

UNITED STATES PATENT OFFICE.

Ex parte Sonnabein & Lind.

Trade-Mark for Toilet Articles.

Petition.

Application for registry filed April 5, 1898; serial No.55,647.

Messrs. Wiedersheim & Fairbanks for applicants.

"The action of the examiner in refusing registration of the words "Cuban Violets", upon the ground that they are either descriptive or deceptive in character, seems to be well founded.

"This case comes within the ruling of ex parte Delbovilla & Co., 58 MS. Dec., 14. In that case registration of the words "Crushed Roses" was refused. The reasoning in that case applies so directly to this, that nothing would be gained by a lengthy discussion of the question.

"The action of the examiner is affirmed."

(Signed) C. H. Duell,

Commissioner.

September 14, 1898.

85.09.147

Sept. 9, 1898. (Recorded Vol. 65, page 186) M.H.

UNITED STATES PATENT OFFICE.

Ex parte A. Stein and Company.

Trade-Mark for Garters.

Petition.

Application for registry filed November 10, 1897, No. 54,559.

Messrs. Pierce & Fisher for applicant.

This is a petition from the action of the examiner in refusing registration of the words "Uncle Sam's" and a representation of the figure conventionally known as "Uncle Sam", as a trade-mark for garters. The examiner has made objection to the form in which the alleged essential features of the mark are set forth. That part of the the statement objected to is the following:

"either in identity and entirety as hereinbefore described and as illustrated in the accompanying fac-simile or to such extent and in such near resemblance thereto as might be calculated to deceive and mislead the public."

Notwithstanding the argument of applicant's attorneys, I agree with the examiner, and believe that his objection is well founded. Certain regulations have been promulgated by the office, and among them is the requirement that the application should particularly discriminate between the essential and non-essential features of

Sept. 9, 1898. (Recorded Vol. 65, page 188) M.H.

UNITED STATES PATENT OFFICE.

Ex parte A. Stein and Company.

Trade-Mark for Garters.

Petition.

Application for registry filed November 10, 1897, No. 64,559.

Messrs. Pierce & Fisher for applicant.

This is a petition from the action of the examiner in refusing registration of the words "Uncle Sam's" and a representation of the figure conventionally known as "Uncle Sam", as a trade-mark for garters. The examiner has made objection to the form in which the alleged essential features of the mark are set forth. That part of the statement objected to is the following:

"either in identity and entirety as hereinbefore described and as illustrated in the accompanying fac-simile or to such extent and in such near resemblance thereto as might be calculated to deceive and mislead the public."

Notwithstanding the argument of applicant's attorneys, I agree with the examiner, and believe that his objection is well founded. Certain regulations have been promulgated by the office, and among them is the requirement that the application should particularly distinguish between the essential and non-essential features of

the alleged trade-mark. Section 13 of the Trade-Mark Act of 1881, authorizing the registration of trade-marks, provides -

"That the Commissioner of Patents is authorized to make rules and regulations and prescribe forms for the transfer of the right to use trade-marks and for recording such transfers in his office."

The regulation above referred to, made in conformity with the statute, is reasonable and is in the interest of applicants and the office. It is for the court to decide in each case whether or not a mark claimed to be an infringement of a registered mark is "in identity and entirety" similar to the registered mark, as illustrated in the fac-simile required by the statute to be filed, or whether it is calculated to deceive and mislead the public.

The objectionable clause inserted in applicant's statement can add nothing to the strength of his position, if he should be compelled to protect any supposed right by recourse to the court. In any event, before the alleged trade-mark can be registered, the objection of the examiner must be removed by cancellation of the objectionable clause.

The examiner has found the trade-mark anticipated by the registered trade-mark of Farnsworth, No.25,969, of February 5, 1895, for the words "Uncle Sam", and the conventional figure of "Uncle Sam". An examination of this registered trade-mark discloses that the registrant adopted it for use as a trade-mark for wearing apparel for men and boys, and that the particular description of

the alleged trade-mark. Section 12 of the Trade-Mark Act of 1891, authorizing the registration of trade-marks, provides -

"That the Commissioner of Patents is authorized to make rules and regulations and prescribe forms for the transfer of the right to use trade-marks and for recording such transfers in his office."

The regulation above referred to, made in conformity with the statute, is reasonable and is in the interest of applicants and the office. It is for the court to decide in each case whether or not a mark claimed to be an infringement of a registered mark is "in identity and entirety" similar to the registered mark, as illustrated in the two-similar required by the statute to be filed, or whether it is calculated to deceive and mislead the public.

The objectionable clause inserted in applicant's statement can add nothing to the strength of his position, if he should be compelled to protect any supposed right by recourse to the court. In any event, before the alleged trade-mark can be registered, the objection of the examiner must be removed by cancellation of the objectionable clause.

The examiner does found the trade-mark anticipated by the registered trade-mark of Farnsworth, No.36,860, of February 8, 1898, for the words "Uneeda Bun", and the conventional figure of "Uneeda Bun". An examination of this registered trade-mark discloses that the registrant adopted it for use as a trade-mark for wearing apparel for men and boys, and that the particular description of

goods comprised in such class on which it is used is clothing of all kinds for men and boys. It is apparent that the registrant intended to cover the class of wearing apparel used by men and boys. In view of the decisions, both of the courts and of the office, I am of the opinion that where an applicant intends to cover a class broadly, it is unnecessary to mention every particular description of goods comprised in such class. Smith et al v. Reynolds & Jacobs, 3 O.G., 214; ex parte Boehm & Co., 8 O.G., 319. Under these decisions I think that the registrant would be protected by the courts in the use of the trade-mark when applied to garters. I think, therefore, that the applicant is anticipated by the present registration. Ex parte Manny & Co., 17 MS. Dec., 455.

It may be that the registered mark is not in use, or that its owner has not used it and does not care to use it in connection with such articles as garters. I think it would be proper for the office to register the mark, if applicant should file a written statement from the registrant evidencing his consent. As the case stands at present, the action of the examiner is affirmed.

(Signed) C. H. Duell,

Commissioner.

September 15, 1898.

goods comprised in such class on which it is used is clothing of all kinds for men and boys. It is apparent that the registrant intended to cover the class of wearing apparel used by men and boys. In view of the decisions, both of the courts and of this office, I am of the opinion that where an applicant intends to cover a class broadly, it is unnecessary to mention every particular description of goods comprised in such class. Smith et al v. Heyrolds & Jacobs, 3 O.G., 214; Ex parte Doerr & Co., 6 O.G., 318. Under these decisions I think that the registrant would be protected by the courts in the use of the trade-mark when applied to garters. I think, therefore, that the applicant is entitled by the present registration. Ex parte Manny & Co., 14 Ms. Dec., 156.

It may be that the registered mark is not in use, or that the owner has not used it and does not care to use it in connection with such articles as garters. I think it would be proper for the office to register the mark, if applicant should file a written statement from the registrant evidencing his consent. As the case stands at present, the action of the examiner is affirmed.

(Signed) C. H. Duell,

Commissioner.

September 15, 1888.

55 O.G. 148

September 20, 1898. (Recorded Vol. 65, page 209) M.H.

UNITED STATES PATENT OFFICE.

Ex parte Thomas H. McInnerney.

Trade-Mark for Confections.

Petition.

Application filed May 16, 1898, No.55,787.

Mr. J. Walter Douglass for applicant.

Applicant petitions from the action of the examiner in refusing registration of the word "Chewies" as a trade-mark for confections of the marsh-mallow and cream or molasses type. He further petitions that in case the word "Chewies" is held not registrable, he may be permitted by amendment to prefix the word "Dewey's", so that the mark will be "Dewey's Chewies", either with or without a paraph about and underneath the word Chewies.

The application as presented stands rejected upon the trade-mark of the Chicago Candy Company, No.28,691, July 28, 1896, for the word "Chewso" for chewing candy. The applicant insists, as I understand his contention, that a word must be written like and sound like a registered trade-mark in order that the registered mark be a pertinent reference. I cannot agree with this conten-

September 20, 1898. (Recorded Vol. 65, page 209)

UNITED STATES PATENT OFFICE.

Ex parte Thomas H. Molmoreny.

Trade-Mark for Confections.

Petition.

Application filed May 16, 1898, No. 55,787.

Mr. J. Walter Douglass for applicant.

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The application as presented stands rejected upon the trade-mark of the Chicago Candy Company, No.28,691, July 26, 1898, for the word "Chewso" for chewing candy. The applicant insists, as I understand his contention, that a word must be written like and sound like a registered trade-mark in order that the registered mark be a pertinent reference. I cannot agree with this conten-

tion. Were applicant correct it would never have been held by the courts that "Sapolio" was infringed by the use of the word "Saponite"; "Celluloid" by the word "Cellonite", and "Chatterbox" by "Chatterbook." The differences between the words above quoted are no greater than between the words "Chewso" and "Chewies." I am therefore of the opinion that the rejection is well founded.

The change which the applicant seeks to have made by amendment in the mark as originally filed is one that the office has several times ruled ought not to be permitted. It would require a new drawing and a new statement. In ex parte Calvert & Brother, 64 MS.Dec., 157, the Commissioner said:

"I do not think it good practice to permit such a change to be made in what is set forth as the essential feature of a trade-mark as might make the statement as to the period of use not apply to the new mark."

But whether the length of time of use would apply to the amended mark is not entirely controlling. It might apply without making the amendment one proper to be permitted. Applicant has sought to register the word "Chewies", and when that is rejected on reference there is no good reason for permitting him to add other features not disclosed in the statement. I do not think the amendment is a proper one to be made.

Applicant states that "'Dewey's' is not an ordinary surname." I can hardly agree with him that -

tion. Were applicant correct it would never have been held by the courts that "Sapolio" was infringed by the use of the word "Saponite"; "Celluloid" by the word "Celonite", and "Chatterbox" by "Chatterbook." The differences between the words above quoted are no greater than between the words "Chewso" and "Chewies." I am therefore of the opinion that the rejection is well founded.

The change which the applicant seeks to have made by amendment in the mark as originally filed is one that the office has several times ruled ought not to be permitted. It would require a new drawing and a new statement. In ex parte Calvert & Brother, 64 MS.Dec., 187, the Commissioner said:

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Applicant states that "'Dewey's' is not an ordinary surname." I can hardly agree with him that -

"After the events at Cavite and Manila culminating in the naval victory of May 1st, 1898, 'Dewey' ceased to be an ordinary surname and became historical, fanciful, and romantic,"

and therefore registrable. However, this may be, it is unnecessary at this time to decide whether or not under the circumstances stated the name "Dewey" is registrable. I cannot, however, refrain from expressing the opinion that even if it be registrable, no one has the right, without the consent of Dewey, to appropriate it as a trade-mark. A living celebrity is entitled to protection from the ordinary trader.

The decision of the examiner is affirmed.

(Signed) C. H. Duell,

Commissioner.

September 21, 1898.

"After the events at Cavite and Manila culminating in the naval victory of May 1st, 1898, 'Dewey' ceased to be an ordinary surname and became historical, fanciful, and romantic,"

and therefore registrable. However, this may be, it is unnecessary at this time to decide whether or not under the circumstances stated the name "Dewey" is registrable. I cannot, however, refrain from expressing the opinion that even if it be registrable, no one has the right, without the consent of Dewey, to appropriate it as a trade-mark. A living celebrity is entitled to protection from the ordinary trader.

The decision of the examiner is affirmed.

(Signed) C. H. Duell,
Commissioner.

September 21, 1898.

Sept. 22, 1898. (Recorded Vol. 65, page 223.)

85 O.G. 149

United States Patent Office.

Ex parte Sylvan Dalsimer & Sons.

Trade-Mark for Bicycles, &c.

Petition.

Application for registry filed June 14, 1898, No. 5 ,932.

Messrs. Wiedersheim & Fairbanks for applicants.

Sylvan Dalsimer & Sons, a firm, seek to register the name "Dalsimer" as a trade-mark to be used for bicycles and parts thereof, and appeal from the action of the examiner refusing registration.

Applicants seek to register their surname, and by their appeal I am asked to ignore the statute, overturn a well-settled rule, and reverse the Supreme Court. Section 3 of the trade-mark law, approved March 3, 1881, expressly states that no alleged trade-mark shall be registered "which is simply the name of the applicant."

In Brown Chemical Co. v. Meyer, 139 U. S., 540, the court said:

"It is hardly necessary to say that an ordinary surname cannot be appropriated as a trade-mark by any one person as against others of the same name, who are using it for a legitimate purpose".

Sept. 22, 1898. (Recorded Vol. 65, page 223.)

United States Patent Office.

Ex parte Sylvan Delamater & Sons.

Trade-Mark for Bicycles, &c.

Petition.

Application for registration filed June 14, 1898, No. [illegible].

Messrs. Wiedersheim & Fairbanks for applicants.

Sylvan Delamater & Sons, a firm, seek to register the name "Delamater" as a trade-mark to be used for bicycles and parts thereof, and appeal from the action of the examiner refusing registration.

Applicants seek to register their surname, and by their appeal I am asked to ignore the statute, overturn a well-settled rule, and reverse the Supreme Court. Section 3 of the trade-mark law, approved March 3, 1881, expressly states that no alleged trade-mark shall be registered "which is simply the name of the applicant."

In Brown Chemical Co. v. Meyer, 139 U. S., 540, the court said:

"It is hardly necessary to say that an ordinary surname cannot be appropriated as a trade-mark by any one person as against others of the same name, who are using it for a legitimate purpose".

The same court, in the later case of Columbia Mill Co. v. Alcorn, 150 U. S., 460, after referring to the case of Mfg. Co. v. Spear, 2 Sandf., 599, in which it is laid down "that no one has a right to appropriate a sign or symbol which, from the nature of the fact it is used to signify, others may employ with equal truth, and, therefore, have an equal right to employ for the same purpose", said:

> "It is upon these principles that a person may put his own name upon his own goods, notwithstanding another person of the same name may, in that name, manufacture and sell the same or similar articles."

The general rule as to the appropriation of a surname by its bearer has been upheld in nearly all of the State courts. For example in Rogers v. Rogers, 53 Conn., 121, the court in stating that there was no authority or reason to support the doctrine that the fair honest use of a surname can be enjoined, said:

> "Such a rule would operate in restraint of trade, and prohibit a person from using the ordinary means that all are entitled to use in the prosecution of business enterprises, that such use contains no element of false representation or personation in any just and true sense, and that, though it may be true that a possibility exists that the goods of one will be purchased to some extent by persons who either know no distinction or even by the occasional few who suppose them to be the goods of another; this condition of things is inevitable in trade and commerce, inherent in the nature of things."

In the later case of Wm. Rogers Mfg. Co. v. Simpsin, 54 Conn., 527, the court said:

> "The law also gives to a manufacturer the right to use his own name as a mark upon his own goods, although it be the same as that of another manufacturer of similar goods who has previously made his name a part of his own trade-mark, if in such use by the former there is no false representation."

The same court, in the later case of Columbia Mill Co. v. Alcorn, 150 U. S., 460, after referring to the case of Mfg. Co. v. Spear, 2 Sandf., 599, in which it is laid down "that no one has a right to appropriate a sign or symbol which, from the nature of the fact it is used to signify, others may employ with equal truth, and, therefore, have an equal right to employ for the same purpose", said:

"It is upon these principles that a person may put his own name upon his own goods, notwithstanding another person of the same name may, in that name, manufacture and sell the same or similar articles."

The general rule as to the appropriation of a surname by [illegible] bearer has been upheld in nearly all of the State courts. For example in Rogers v. Rogers, 52 Conn., 121, the court in stating that there was no authority or reason to support the doctrine that the fair [illegible] use of a surname can be sustained, said:

"Such a rule would operate in restraint of trade, and prohibit a person from using the ordinary means that all are entitled to use in the prosecution of business enterprises, that such use contains no element of false representation or person-ation in any just and true sense, and that, though it may be true that a possibility exists that the goods of one will be purchased to some extent by persons who either know no distinction or even by the occasional few who suppose them to be the goods of another; this condition of things is inevitable in trade and commerce, inherent in the nature of things."

In the later case of Wm. Rogers Mfg. Co. v. Stimpson, 54 [illegible]., 527, the court said:

"The law also gives to a manufacturer the right to use his own name as a mark upon his own goods, although it be the same as that of another manufacturer of similar goods who has previously made his name a part of his own trade-mark, if in such use by the former there is no false representation."

Clearly applicants have no right under the statute or, in the absence of any statute, under the well-settled rules of law applicable to the subject, to register their surname as a trade-mark. If the surname is unlawfully used, even by one born to the name, the courts do not hesitate to prevent such unlawful use. Walter Baker & Co. v. Sanders, 80 Fed. Rep., 894.

The decision of the examiner of trade-marks is affirmed.

C. H. Duell,

Commissioner.

September 26, 1898.

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he absence of any statute, under the well-settled rules of law appli-
able to the subject, to register their surname as a trade-mark. If
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o. v. Sanders, 80 Fed. Rep., 324.

The decision of the examiner of trade-marks is affirmed.

C. H. Duell,

Commissioner.

September 26, 1902.

85.09.150

Sept. 22, 1898. (Recorded Vol. 65, page 228)

UNITED STATES PATENT OFFICE.

Ex parte Norman J. Macdonald.

Trade-Mark for Medicinal Beverages.

Petition.

85.09.150

Application filed June 6, 1898, No.55,891.

Mr. A. V. Cushman for applicant.

Applicant seeks to register the compound or hyphenated word "Non-Tox", as a trade-mark for a class of goods termed "carbonated root and herb extract." The application stands rejected on reference to the prior registered trade-mark of Eilenberg, No.11,585, dated October 21, 1884, for a class of goods termed "medicinal liquor or tonic for the speedy removal of the effects of over-indulgence in drink. The essential features of the registered mark are the words "Anti-Tox, the three consecutive circles, one shaded red, with the 'T O X,' the ant, and eye."

The marks are not identical, nor are they applied, strictly speaking, to the same class of goods. There is, however, a certain resemblance between them which might cause confusion or mistake in

Sept. 22, 1898. (Recorded Vol. 65, page 228)

UNITED STATES PATENT OFFICE.

Ex parte Norman L. Macdonald.

Trade-Mark for Medicinal Beverages.

Petition.

Application filed June 6, 1898, No. 58,821.

Mr. A. V. Chapman for applicant.

Applicant seeks to register the compound or hyphenated word "Non-Tox", as a trade-mark for a class of goods termed "carbonated root and herb extract." The application stands rejected on reference to the prior registered trade-mark of Millenberg, No. 11,888, dated October 21, 1888, for a class of goods termed "medicinal liquor or tonic for the speedy removal of the effects of over-indulgence in drink." The essential features of the registered mark are the words "Anti-Tox", the three consecutive circles, one shaded red, with the 'T O X,' the ant, and eye."

The marks are not identical, nor are they applied, strictly speaking, to the same class of goods. There is, however, a certain resemblance between them which might cause confusion or mistake in

the mind of the public or deceive careless purchasers, provided both marks were on the market.

It was stated at the hearing that attempts had been made to discover whether the registered mark was now in use, and upon my suggestion an affidavit accompanied by letters from leading drug-houses has been filed, which tends very strongly to show that the registered mark is dead. If this be so, it follows that there will be no confusion or mistake in the mind of the public and that the public will not be deceived. The letters submitted are from three well-known and leading drug-houses, in one of which it is stated, in referring to "Anti-Tox": "We do not know the article, and never heard of it and never dealt in it." A second letter states: "We have made inquiry among the drug-houses here, but were unable to find the article called 'Anti-Tox'. It was in this market some years ago, but has now gone out of use." A third letter states: "We do not know of the article inquired for, and although we have made inquiry concerning it among the trade here, have failed to elicit any information."

In view of the circumstances, the differences in the marks, the differences in the articles to which they are intended to be applied, and the registered mark seemingly having been used but to a small extent and being now unknown to the trade, I am inclined to give the benefit of the doubt to the applicant, and therefore reverse the decision of the examiner.

(Signed) C. H. Duell,
Commissioner.

September 27, 1898.

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In view of the circumstances, the differences in the marks, the differences in the articles to which they are intended to be applied, and the registered mark seemingly having been used but to a small extent and being now unknown to the trade, I am inclined to give the benefit of the doubt to the applicant, and therefore reverse the decision of the examiner.

(Signed) O. H. Duell,
Commissioner.

September 27, 1899.

UNITED STATES PATENT OFFICE.

Ex parte Cole Manufacturing Company.

Trade-Mark for Heating Stoves.

Petition.

Application for registration filed May 3, 1898, No.55,711.

Messrs. Munn & Company for applicant.

Applicant petitions from the action of the examiner in refusing to register the words "Cole's Original Hot Blast" as a trade-mark for heating stoves.

"Decision of examiner affirmed."

(Signed) A. P. Greeley,

Acting Commissioner.

September 30, 1898.

UNITED STATES PATENT OFFICE.

Ex parte Cole Manufacturing Company.

Trade-Mark for Heating Stoves.

Petition.

Application for registration filed May 3, 1898, No.55,711.

Messrs. Munn & Company for applicant.

Applicant petitions from the action of the examiner in refusing to register the words "Cole's Original Hot Blast" as a trade-mark for heating stoves.

"Decision of examiner affirmed."

(Signed) A. P. Greeley,

Acting Commissioner.

September 20, 1898.

UNITED STATES PATENT OFFICE.

Ex parte Albert H. Henderson.

Trade-Mark for Medical Compound.

Petition.

Application for registration filed March 29, 1898, No.55,496.

Messrs. Lyons & Bissing for applicant.

From the refusal of the examiner to register the words "Kid Nee Kure" as a trade-mark for a remedy for kidney and analogous diseases, applicant petitions, and his decision presents a clean-cut question for decision. That question is: Can a purely descriptive phrase, not otherwise registrable, become so by misspelling the words of the phrase and misplacing capitals?

In the clever and carefully prepared brief presented in behalf of the applicant, it is admitted that the phrase is descriptive, and therefore not registrable in itself, but that by reason of what is termed its "characteristic fanciful spelling" it presents a distinctive appearance to the eye, and therefore that the action of the examiner in refusing registry was an error.

The presentation of the affirmative of the issue by applicant's attorneys is far from convincing, and no adjudicated case

Sept. 27, 1898. (Recorded Vol. 65, page 246) M. M.

UNITED STATES PATENT OFFICE.

Ex parte Albert H. Henderson.

Trade-Mark for Medical Compound.

Petition.

Application for registration filed March 29, 1898, No. 55,490.

Messrs. Lyons & Bleating for applicant.

From the refusal of the examiner to register the words "Kid Nee Kure" as a trade-mark for a remedy for kidney and analogous diseases, applicant petitions, and his deviation presents a clean-cut question for decision. That question is: Can a purely descriptive phrase, not otherwise registrable, become so by misspelling the words of the phrase and misplacing capitals?

In the clever and carefully prepared brief presented in behalf of the applicant, it is admitted that the phrase is descriptive, and therefore not registrable in itself, but that by reason of what is termed its "characteristic fanciful spelling" it presents a distinctive appearance to the eye, and therefore that the action of the examiner in refusing registry was an error.

The presentation of the affirmative of the issue by applicant's attorneys is fair from convincing, and no adjudicated case

sustaining the position is called to my attention. While it is doubtless true that letters and words in some instances may be combined to form a trade-mark, yet there is an exception which must not be lost sight of, and that is that the letters or words so combined must not form a word or phrase descriptive in its ordinary sense or indicating an attribute of the article not equivalent to ownership or origin. The general rule is against appropriating mere words or phrases as a trade-mark, and the exception applies only to such as indicate origin or ownership, and which do not in any sense refer to quality or use.

It has been formerly held by this office that descriptive words in a foreign language, having an English significance, are not registrable. Ex parte Lawrence & Co., 10 O.G., 163. It has also been held that a misspelled descriptive word is not registrable. Ex parte Kipling, 24 O.G., 899.

The United States Supreme Court, in Goodyear's &c. Co. v. Goodyear &c. Co., 128 U.S., 598, in holding that the designation "Goodyear Rubber Company" was not subject to exclusive appropriation, said:

"Any use of terms of similar import, or any abbreviation of them, must be alike free to all persons."

I cannot concede for a moment that if the phrase "Goodyear Rubber Company," misspelled and presented in fanciful characters, had been before the court for protection as a trade-mark, there

had been before the court for protection as a trade-mark, there "Goodyear Rubber Company," misspelled and presented in fanciful characters,

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would have been any different conclusion arrived at than that the words were not subject to protection as a trade-mark. If the court had protected the designation it would have been under the theory of unfair competition in business, and not because the misspelled designation was the subject for lawful trade-mark.

The particular spelling of the word "Kid Nee" and the misspelling of the word "Kure" cannot, in my opinion, make the combined words registrable. It is urged on behalf of the applicant that this office has commonly registered such marks. In ex parte Lawrence & Co., supra, the Commissioner pertinently said:

"The attorney in his brief has referred to a number of registered trade-marks as being equivalents of the ones now presented, and argues that because they were registered his must be. This proposition is not agreed to. If mistakes have been made in the practice of the office it is high time they should be corrected."

With equal force it was said in ex parte Kipling, supra:

"Neither an applicant nor the public should be misled by the action of this office in accepting and registering words, signs, or symbols as trade-marks which are clearly not such."

The decision of the examiner is affirmed.

(Signed) C. H. Duell,

Commissioner.

October 4, 1898.

would have been any different conclusion arrived at than that the words were not subject to protection as a trade-mark. If the court had protected the designation it would have been under the theory of unfair competition in business, and not because the misspelled designation was the subject for lawful trade-mark.

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With equal force it was said in ex parte Kipling, supra:

"Neither an applicant nor the public should be misled by the action of this office in accepting and registering words, signs, or symbols as trade-marks which are clearly not such."

The decision of the examiner is affirmed.

(Signed) C. H. Duell,

Commissioner.

October 4, 1898.

(Recorded Vol. 65, page 252)

UNITED STATES PATENT OFFICE.

Ex parte Lambertville Rubber Company.

Trade-Mark for Rubber Boots and Shoes.

Petition.

Application for registration filed July 19, 1898, No.56,204.

Mr. James L. Norris for applicant.

Applicant petitions from the action of the examiner in refusing to register the word "HITOP" as a trade-mark for rubber boots and shoes.

"On the authority of ex parte Henderson and the cases referred to in that decision, dated October 4, 1898, the decision of the examiner of trade-marks is affirmed."

(Signed) C. H. Duell,

Commissioner.

October 4, 1898.

(Recorded Vol. 65, page 252)

UNITED STATES PATENT OFFICE.

Ex parte Lambertville Rubber Company.

Trade-Mark for Rubber Boots and Shoes.

Petition.

Application for registration filed July 19, 1898, No. 56,204.

Mr. James L. Norris for applicant.

Applicant petitions from the action of the examiner in refusing to register the word "HITOP" as a trade-mark for rubber boots and shoes.

"On the authority of ex parte Henderson and the cases referred to in that decision, dated October 4, 1898, the decision of the examiner of trade-marks is affirmed."

(Signed) C. H. Duell,

Commissioner.

October 4, 1898.

October 11, 1898. (Recorded Vol. 65, page 297) M. H.

UNITED STATES PATENT OFFICE.

Ex parte Curtice Brothers Company.

Trade-Mark for Packaged Food and Drink Products.

Petition.

Application for registration filed August 1, 1898, No.56,278.

Mr. A. W. Harrison for petitioner.

Applicant petitions from the action of the examiner in refusing to register the words "Blue Label" on a generally blue field as a trade-mark for canned soups, &c. The refusal is based upon the ground that the words "Blue Label" on a generally blue field are incapable of exclusive monopoly, being descriptive of the color of the label which is applied to the goods in question.

It is conceded by applicant that it has no exclusive right to use a blue label upon its goods. The principle is well established that "the color of a label, wrapper, capsule, or package alone cannot be protected as a trade-mark." (26 Am. & Eng. Enc. of Law, pages 245 - 306.)

If the right to use labels upon articles of commerce is vested in the public, I cannot see how they can be deprived of the right to print upon such labels words descriptive of the color of the

October 11, 1898. (Recorded Vol. 65, page 297) M. M.

UNITED STATES PATENT OFFICE.

Ex parte Curtice Brothers Company.

Trade-Mark for Packaged Food and Drink Products.

Petition.

Application for registration filed August 1, 1898, No. 50,378.

Mr. A. W. Harrison for petitioner.

Applicant petitions from the action of the examiner in refusing to register the words "Blue Label" on a generally blue field as a trade-mark for canned soups, &c. The refusal is based upon the ground that the words "Blue Label" on a generally blue field are incapable of exclusive monopoly, being descriptive of the color of the label which is applied to the goods in question.

It is conceded by applicant that it has no exclusive right to use a blue label upon its goods. The principle is well established that "the color of a label, wrapper, capsule, or package alone cannot be protected as a trade-mark." (20 Am. & Eng. Enc. of Law, pages 245 - 506.)

If the right to use labels upon articles of commerce is vested in the public, I cannot see how they can be deprived of the right to print upon such labels words descriptive of the color of the

label. Of course in so doing, they must not imitate the packages, labels, &c., of a rival, so as to unlawfully deprive him of his vested rights or defraud purchasers by leading them to believe that they are buying the goods made by another. The remedy for such wrong, however, is with the courts, and is not based on any trade-mark rights, but rather on the theory of unfair competition in business.

It appears that applicant has, in the past few years, increased its sales to a most remarkable extent, and it presents a case that would induce me to grant the petition, if it were well founded in law; but unfortunately the authorities are substantially against its contention.

My attention has not been called to any case where any court has sustained a trade-mark consisting of words descriptive of the label placed upon articles of commerce. I have found one case, however, where a former Acting Commissioner held that as green labels had not theretofore been employed upon packages of thread, and as the then applicants were the first to use either the green labels or the words descriptive thereof, they were entitled to register the words "Green Label Thread." The decision is not sustained by any authorities, nor do I consider the reasoning sound.

The New York Court of Appeals, in Fischer et al v. Blank, 33 N. E. Rep., 1040, held that the term "Black Package Tea" was

label. Of course in so doing, they must not imitate the packages, labels, &c., of a rival, so as to unlawfully deprive him of his vested rights or defraud purchasers by leading them to believe that they are buying the goods made by another. The remedy for such wrong, however, is with the courts, and is not based on any trade-mark rights, but rather on the theory of unfair competition in business.

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The New York Court of Appeals, in Tisdorf et al v. Blank, 38 N. E. Rep., 1040, held that the term "Black Package Tea" was

not a valid trade-mark. The court in referring to the term said:

"It manifestly has reference either to the quality of the article, or the color of the package in which it is sold. In either case it cannot be made the subject of individual appropriation. If the adoption of a package of a particular form or color cannot confer any proprietary right to its use, it is difficult to perceive how the assumption of a name which is simply descriptive of the color of the package can be lawfully protected from use by others."

It is evident from the quotation that if the word "Tea" had been omitted from the term, the objection of the court would not have been removed, for in that case the court would have said - "It manifestly has reference * * to * * * the color of the package in which it is sold." Substituting the word label for "package" what is there said would apply exactly to the present case.

The authority quoted seems to me to be controlling, but even in the absence of authority, the mark here sought to be registered cannot, in my opinion, be a lawful trade-mark.

My attention has been called to the fact that a few years ago the office granted to applicant a certificate of registration for the words "Blue Label." If that trade-mark is valid, applicant will not suffer any injury by a refusal to register the present mark. If, on the other hand, it is an invalid mark, I fail to see how the words "Blue Label" when limited to their use "on a generally blue field"- which brings out more clearly the descriptive quality of the words - can be valid.

The decision of the examiner is affirmed.

(Signed) C. H. Duell,
Commissioner.

October 18, 1898.

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The decision of the examiner is affirmed.

(Signed) C. H. Duell,

October 18, 1898. Commissioner.

Oct. 21, 1898. (Recorded Vol. 65, page 310) S.E.T.

UNITED STATES PATENT OFFICE.

Ex parte A. Werner & Co.

Trade-Mark for Wines.

Appeal.

Application for registration filed March 23, 1898, No. 55,449.

Mr. Frederick B. Keefer for appellants.

This is an appeal from the decision of the examiner of trade-marks refusing to register as a trade-mark for wines the figures "1" and "2" arranged respectively above and below a dividing line formed by the rays of a shooting star.

The references are the registrations of Kunkelmann, No. 8,963, dated December 27, 1891, and No. 22,248, dated December 27, 1892. Each of these registrations shows a star with rays extending downward therefrom, substantially like the device of the appellants. The registered marks do not contain the numerals 1 and 2 and the appellants contend that this difference distinguishes their mark from them and renders it registrable thereover. They hold that since the numerals themselves are arbitrary and properly registrable as a trade-mark, they are no less so because accompanied

(Recorded Vol. 65, page 310)

Oct. 21, 1898.

UNITED STATES PATENT OFFICE.

Ex parte A. Werner & Co.

Trade-Mark for Wines.

Appeal.

Application for registration filed March 25, 1898, No.55,449.

Mr. Frederick B. Keefer for appellants.

This is an appeal from the decision of the examiner of trade-marks refusing to register as a trade-mark for wines the figures "1" and "2" arranged respectively above and below a dividing line formed by the rays of a shooting star.

The references are the registrations of Kunkelmann, No.8,965, dated December 27, 1881, and No.22,248, dated December 27, 1892. Each of these registrations shows a star with rays extending downward therefrom, substantially like the device of the appellants. The registered marks do not contain the numerals 1 and 2 and the appellants contend that this difference distinguishes their mark from them and renders it registrable thereover. They hold that since the numerals themselves are arbitrary and properly registrable as a trade-mark, they are no less so because accompanied

by the shooting star.

This view of the case is not the proper one, however, since the question is not as to whether some feature of the mark is registrable, but as to whether the entire mark including all of the features shown is registrable. If in its entirety or its essential features it is so nearly like a prior mark as to have a tendency to mislead or deceive the public, it should not be registered, although some of its features are not contained in that mark. Ex parte Kaufmann & Blache, 84 O.G., 145.

The shooting star being an essential feature of this and also of the registered marks, it is held that the resemblance is such as to deceive the public and therefore registration must be refused.

The decision of the examiner is affirmed.

(Signed) A. P. Greeley,

Acting Commissioner,
now Assistant Commissioner.

October 24, 1898.

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The shooting star being an essential feature of this and also of the registered marks, it is held that the resemblance is such as to deceive the public and therefore registration must be refused.

The decision of the examiner is affirmed.

(Signed) A. P. Greeley,

Acting Commissioner.

Now Assistant Commissioner.

October 24, 1888.

(Recorded Vol. 65, Page 362)

UNITED STATES PATENT OFFICE.

Ex parte Lewis Golden.

Trade-Mark for Trousers.

Appeal.

Application for registration filed February 5, 1898, No.55,075.

Messrs. Fisk & Thomas for Appellant.

This is an appeal from the action of the examiner in refusing to register the phrase, "99 Cents A Leg," in connection with the representation of a pair of pants, as a trade-mark for trousers.

"So far as the representation of a pair of trousers is concerned, it falls within the well-settled rule that a symbol or sign which others have the equal right to use cannot be appropriated as a trade-mark. Canal Co. v. Clark, 13 Wall., 311; Pratt & Farmer, 10 O.C., 866.

"The phrase '99 cts a Leg' is equally objectionable. Not only is the phrase advertising in character but it is descriptive. In other words, it means that applicant's price for trousers is $1.98. Ex parte Parker, Holmes & Co., 64 Ms., 129; ex parte Ganz, 58 MS., 466.

(Recorded Vol. 65, Page 502)

UNITED STATES PATENT OFFICE.

Ex parte Lewis Golden.

Trade-Mark for Trousers.

Appeal.

Application for registration filed February 5, 1898, No. 55,075.

Messrs. Fisk & Thomas for Appellant.

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"So far as the representation of a pair of trousers is concerned, it falls within the well-settled rule that a symbol or sign which others have the equal right to use cannot be appropriated as a trade-mark. Canal Co. v. Clark, 13 Wall., 311; Pratt & Farmer, 10 O.G., 806.

"The phrase '99 cts a leg' is equally objectionable. Not only is the phrase advertising in character but it is descriptive. In other words, it means that applicant's price for trousers is $1.98. Ex parte Parker, Holmes & Co., 64 Ms., 129; ex parte Crane, 65 Ms., 460.

"The mark as a whole is objectionable, not a lawful trade-mark, and should not be registered. Ex parte Smith, 16 O.G., 679."

(Signed) C. H. Duell,

Commissioner.

November 2, 1898.

"The mark as a whole is objectionable, not a lawful trade-mark, and should not be registered. Ex parte Smith, 16 O.G., 679."

(Signed) C. H. Duell,

Commissioner.

November 2, 1898.

(Recorded Vol. 65, page 373)

UNITED STATES PATENT OFFICE.

Ex parte Johnston & Johnston.

Trade-Mark for a Medical Compound.

Appeal.

Application for registration filed June 28, 1898, No. 55,993.

Messrs. R. S. & A. B. Lacey for Appellants.

This is an appeal from the action of the examiner in refusing to register the phrase "One Day Cold Cure" as a trade-mark for a compound for the cure of LaGrippe, colds, and kindred diseases.

To meet the examiner's objection that the phrase here sought to be registered is either descriptive or deceptive, applicant has filed certain affidavits. The affidavit of the three physicians is to the effect that if colds are treated under certain conditions they may be cured in one day's time. If credit be given to that affidavit such a phrase as "One Day Cold Cure" is or may be descriptive. Applicant has filed his own affidavit, stating that the words are not meant "to imply that the medicament on which they are used will cure a cold in one day." If credit be given to this statement, applicant uses a descriptive phrase deceptively.

(Recorded Vol. 85, page 373)

UNITED STATES PATENT OFFICE.

Ex parte Johnston & Johnston.

Trade-Mark for a Medical Compound.

Appeal.

Application for registration filed June 28, 1898, No. 55,993.

Messrs. R. S. & A. B. Lacey for Appellants.

This is an appeal from the action of the examiner in refusing to register the phrase "One Day Cold Cure" as a trade-mark for a compound for the cure of LaGrippe, colds, and kindred diseases.

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he term is, in any event, advertising in nature and falls within he condemnation of the decisions of this office and the decision f the court referred to by the examiner. The phrase is not a awful trade-mark, and it should not be registered.

The decision of the examiner is affirmed.

(Signed) C. H. Duell,

Commissioner.

ovember 4, 1898.

The term is, in any event, advertising in nature and falls within the condemnation of the decisions of this office and the decision of the court referred to by the examiner. The phrase is not a lawful trade-mark, and it should not be registered.

The decision of the examiner is affirmed.

(Signed) C. H. Duell,

Commissioner.

November 4, 1898.

Ex parte

McLaughlin Bros.

MSD 65-374

86 Dec. 1633

Signature of

Bill of Lading

by attorney sufficient

(Recorded Vol. 65, page 422)

UNITED STATES PATENT OFFICE.

Ex parte Stephen Sanford & Sons.

Trade-Mark for Carpets and Rugs.

Appeal.

Application for registration filed June 14, 1898; No. 55,955.

This is an appeal from the action of the examiner in refusing to register the word "Bezuvia" as a trade-mark for a certain grade of carpets and rugs manufactured by the applicant, which grade is a pile or plush grade of goods woven upon a frame loom with a knife.

Applicant also petitions for the return of the fee, in case the action of the examiner in refusing to register the mark is sustained by the Commissioner on appeal.

"The refusal of the examiner to grant registration in this case was proper for the reasons fully stated by him.

"The fee cannot be returned for the reasons stated in ex parte Thayer, 54 O.G., 957.

"The decision of the examiner is affirmed and the petition denied."

(Signed) A. P. Greeley,
Assistant Commissioner.

November 11, 1898.

(Recorded Vol. 65, page 422)

UNITED STATES PATENT OFFICE.

Ex parte Stephen Sanford & Sons.

Trade-Mark for Carpets and Rugs.

Appeal.

Application for registration filed June 14, 1898; No.55,935.

This is an appeal from the action of the examiner in refusing to register the word "Beauvais" as a trade-mark for a certain grade of carpets and rugs manufactured by the applicant, which grade is a pile or plush grade of goods woven upon a frame loom with a knife.

Applicant also petitions for the return of the fee, in case the action of the examiner in refusing to register the mark is sustained by the Commissioner on appeal.

"The refusal of the examiner to grant registration in this case was proper for the reasons fully stated by him.

"The fee cannot be returned for the reasons stated in ex parte Thayer, 54 O.G., 957.

"The decision of the examiner is affirmed and the petition denied."

(Signed) A. P. Greeley,
Assistant Commissioner.

November 11, 1898.

(Recorded Vol. 95, Page 425)

UNITED STATES PATENT OFFICE.

Ex parte Ziegfeld Company.

Trade-Mark for a Key-Opening Can-Head.

Appeal.

Application for registration filed August 1, 1898; No. 56,275.

Mr. Rudolph Wm. Lotz for appellant.

Applicant, a firm, seeks to register as its trade-mark the letter "Z" and a fac-simile of a portion of the signature of one of the members of the firm - "Morfoot."

The action of the examiner in refusing registration was in my opinion erroneous and not justified under the authorities cited by him. The proposition that the exclusive right to a treating or distinctive form of a surname may survive the exclusive right to the name itself, has been upheld by the U. S. Supreme Court in Singer Mfg. Co. v. June Mfg. Co., 75 O.G., 1705, 1713.

I believe the trade-mark to be registrable, and therefore the decision of the examiner is reversed.

(Signed) C. H. Duell,

Commissioner.

November 16, 1898.

(Recorded Vol. 65, Page 423)

UNITED STATES PATENT OFFICE.

Ex parte Ziegfeld Company.

Trade-Mark for a Key-Opening Can-Head.

Appeal.

Application for registration filed August 1, 1898; No.56,273.

Mr. Rudolph Wm. Lotz for appellant.

Applicant, a firm, seeks to register as its trade-mark the letter "Z" and a fac-simile of a portion of the signature of one of the members of the firm - "Morfoot."

The action of the examiner in refusing registration was in my opinion erroneous and not justified under the authorities cited by him. The proposition that the exclusive right to a tracing or distinctive form of a surname may survive the exclusive right to the name itself, has been upheld by the U. S. Supreme Court in Singer Mfg. Co. v. June Mfg. Co., 75 O.G., 1703, 1712.

I believe the trade-mark to be registrable, and therefore the decision of the examiner is reversed.

(Signed) C. H. Duell,
Commissioner.

November 16, 1898.

(Recorded Vol. 65, Page 482)

UNITED STATES PATENT OFFICE.

Ex parte M. Maran & Son.

Trade-Mark for Cigars.

Appeal.

Application for registration filed August 30, 1888, No. 56,453.

Mr. John A. Saul for Appellants.

This is an appeal from the action of the examiner in refusing to register, as a trade-mark for cigars, the fac-simile signature of the firm, "M. Maran & Son", and the words "Old Reliable Wheeling Stogies" printed across the face of the same.

"Hydro"

Under the admitted facts of the case and in view of the act of August 5, 1882, the mark is registrable. I deem it unnecessary at this time to pass upon any of the other questions raised by the action of the examiner.

The decision of the examiner is reversed.

(Signed) C. H. Duell,

Commissioner.

November 25, 1888.

(Recorded Vol. 65, Page 462)

UNITED STATES PATENT OFFICE.

Ex parte M. Marsh & Son.

Trade-Mark for Cigars.

Appeal.

Application for registration filed August 30, 1898, No. 56,433.

Mr. John A. Saul for Appellants.

This is an appeal from the action of the examiner in refusing to register, as a trade-mark for cigars, the fac-simile signature of the firm, "M. Marsh & Son", and the words "Old Reliable Wheeling Stogies" printed across the face of the same.

Under the admitted facts of the case and in view of the act of August 5, 1882, the mark is registrable. I deem it unnecessary at this time to pass upon any of the other questions raised by the action of the examiner.

The decision of the examiner is reversed.

(Signed) C. H. Duell,

Commissioner.

November 25, 1898.

Ltm

L. & S. V. 631

United States Patent Office.

Ex parte Charles W. Spayd,

Trade-Mark for Medical Compounds.

Petition.

Application for registration filed September 8, 1898, No. 56,481.

Messrs. Davis & Davis for applicant.

Applicant appeals from the decision of the examiner refusing registry for the compound word "Hydro-Bromo Soda Mint", as a trade-mark for remedies for certain named diseases. Applicant proposes to cancel the word "Hydro" as an essential feature of the mark, and the case will therefore be considered as if that word were canceled.

The decisions of the United States courts rather than those of the courts of individual States are controlling upon the action of this office in passing upon questions relating to the registry of alleged trade-marks. In the absence of decisions of the former courts, great respect should be accorded the decisions of the courts of last resort in the various States. The doctrine laid down by the United States Supreme Court in Brown Co. v. Meyer, 139 U.S., 540, seems in point and controlling in the present case. The Supreme Court held the term "Iron Bitters" to be indicative of the ingredients and char-

acteristics of the preparation to which the alleged trade-mark was applied. Yet that term does not clearly indicate what special ingredients are employed in the article. Bitters, as generally understood, being a liquor in which bitter herbs or roots are steeped, one would gather from reading the words "Iron Bitters" that the article was such a liquor, containing in addition thereto some one of the many preparations of iron.

In the present case one would gather from reading the words "Bromo Soda Mint" that soda mint, an article well known to pharmacists, was combined with bromine or a bromide. I can distinguish no difference between the two terms as possessing the characteristics essential to a lawful trade-mark. If one is not a lawful trade-mark, the other is not.

Being taught by the decision of the United States Supreme Court that the term "Iron Bitters" is not a lawful trade-mark, it must be held that "Bromo Soda Mint" is not, and therefore the decision of the examiner of trade-marks is affirmed.

(Signed) C. H. Duell,

Commissioner.

November 26, 1898.

characteristics of the preparation to which the alleged trade-mark was applied. Yet that term does not clearly indicate what special ingredients are employed in the article. Bitters, as generally understood, being a liquor in which bitter herbs or roots are steeped, one would gather from reading the words "Iron Bitters" that the article was such a liquor, containing in addition thereto some one of the many preparations of iron.

In the present case one would gather from reading the words "Bromo Soda Mint" that soda mint, an article well known to pharmacists, was combined with bromine or a bromide. I can distinguish no difference between the two terms as possessing the characteristics essential to a lawful trade-mark. If one is not a lawful trade-mark, the other is not.

Being taught by the decision of the United States Supreme Court that the term "Iron Bitters" is not a lawful trade-mark, it must be held that "Bromo Soda Mint" is not, and therefore the decision of the examiner of trade-marks is affirmed.

(Signed) O. H. Duell,

Commissioner.

November 22, 1909.

EX PARTE STANDARD THERMOMETER & ELECTRIC COMPANY.
Recorded Volume 66, Page 20.

On appeal from the action of the examiner in refusing to register the word "MIDGET" as a trade-mark for arc lamps.

COMMISSIONER'S DECISION.

"The decision of the examiner is reversed, for the reason that there is nothing in the record to show that the word "MIDGET", when applied to applicant's lamps, indicates size. On the contrary, it is asserted that the word, recognizing applicant's trade-mark, calls for its lamps, so designated, regardless of their size.

"The word may doubtless be thought suggestive. The word "Lightning" applied to hay-knives is suggestive, but it was held valid (41 Fed. Rep., 54)."

(Signed) C. H. Duell,
Commissioner.

December 6, 1898.

Ser. No. 56205

EX PARTE STANDARD THERMOMETER & ELECTRIC COMPANY.
Recorded Volume 86, Page 30.

On appeal from the action of the examiner in refusing to registe the word "MIGHT" as a trade-mark for arc lamps.

COMMISSIONER'S DECISION.

"The isolation of the examiner is reversed, for the reason that there is nothing in the record to show that the word "MIGHT", when applied to applicant's lamps, indicates size. On the contrary, it is asserted that the word, recognizing applicant's trade-mark, calls for its lamps, so designated, regardless of their size.

"The word may doubtless be thought suggestive. The word "Lightning" applied to Jay-Knives is suggestive, but it was held valid (41 Fed. Rep., 54)."

(Signed) C. H. Duell,
Commissioner.

December 8, 1890.

EX PARTE JOSEPH WILLIAMS, JR.

Recorded Vol. 66, Page 20.

On appeal from the action of the examiner in refusing to register the words "Sans Pareil" as a trade-mark for certain named meditines, on registered trade-mark to J. T. Smith, #17,556, February 18, 1890, the word-symbol "Non-Pareil" used on an anodyne, and because of the descriptive character of the words claimed.

"The decision of the examiner is affirmed."

(Signed) C. H. Duell,
Commissioner.

December 7, 1898.

EX PARTE JOSEPH WILLIAMS, JR.

Recorded Vol. 66, Page 20.

On appeal from the action of the examiner in refusing to register the words "Sans Pareil" as a trade-mark for certain named medicines, on registered trade-mark to J. T. Smith, #17,556, February 18, 1890, the word-symbol "Non-Pareil" used on an anodyne, and because of the descriptive character of the words claimed.

"The decision of the examiner is affirmed."

(Signed) C. H. Duell,
Commissioner.

December 7, 1898.

Ser. No. 54125

EX PARTE VAIL BROTHERS.

Recorded Vol. 88, Page 20.

On appeal from the action of the examiner in refusing the registration of the words "SOLID COMFORT" as a trade-mark for foot powder, on registered trade-marks of the Comfort Powder Co., #19,977, August 4. 1891, the word "Comfort" for toilet and nursery powder; and C. L. Carpenter, #27,900, March 3, 1896, the words "Foot Komfort" for foot powder; and because of the descriptive and advertising character of the words "SOLID COMFORT" as applied to those suffering from ailments of the feet.

"The decision of the examiner is affirmed."

(Signed) C. M. Duell,

Commissioner.

December 7, 1898.

Rec. No. 56 450

EX PARTE VAIL BROTHERS.

Recorded Vol. 66, Page 20.

On appeal from the action of the examiner in refusing the to register the words "SOLID COMFORT" as a trade-mark for foot powder, on registered trade-marks of the Comfort Powder Co., #19,977, August 4, 1891, the word "Comfort" for toilet and nursery powder; and C. L. Carpenter, #27,900, March 3, 1896, the words "Foot Komfort" for foot powder; and because of the descriptive and advertising character of the words "SOLID COMFORT" as applied to those suffering from ailments of the feet.

"The decision of the examiner is affirmed."

(Signed) C. H. Duell,

Commissioner.

December 7, 1898.

Ser. No. 56450

EX PARTE THEOPHILE T. REBOUL.

Reported Vol. CC, Page 21.

On petition from the action of the examiner in refusing to register the compound hyphenated word-symbol "TANG-ROSE" as a trade-mark for tea, or the trade-mark of E. B. Milton & Co., [illegible], February 6, 1877, the word-symbol "Rose" for Japan tea, and because of the descriptive character of the word "TANG" when used in connection with the word "ROSE".

"This petition is based upon the refusal of the examiner to register the compound hyphenated word-symbol "TANG-ROSE." It is stated by the examiner and not denied that "Tang" is a word defined in a Chinese dictionary as "fragrant," &c., and that therefore the compound hyphenated word sought to be registered is descriptive when applied to tea.

The fact that the word-symbol is hyphenated does not make it registrable. Ex parte Pittsburgh Pump Co., 84 O.C., 309. Furthermore, the word "Rose" has heretofore been registered as a trade-mark for tea, and in view of the prior decisions of the office the registration of "TANG-ROSE" cannot consistently be allowed. Ex parte Merriweather & Co., 85 O.C., 1515, and cases therein cited.

The decision of the examiner is affirmed."

(Signed) C. M. Mell,

Commissioner.

December 8, 1888.

EX PARTE THEOPHILE T. REBOUL.

Recorded Vol. 66, Page 21.

On petition from the action of the examiner in refusing to register the compound hyphenated word-symbol "FANG-ROSE" as a trade-mark for tea, on the trade-mark of E. B. Miller & Co., #4,348, February 6, 1877, the word-symbol "Rose" for Japan tea, and because of the descriptive character of the word "FANG" when used in connection with the word "ROSE".

"This petition is based upon the refusal of the examiner to register the compound hyphenated word-symbol "FANG-ROSE"." It is stated by the examiner and not denied that "Fang" is a word defined in a Chinese dictionary as "fragrant," &c., and that therefore the compound hyphenated word sought to be registered is descriptive when applied to tea.

The fact that the word-symbol is hyphenated does not make it registrable. Ex parte Pittsburgh Pump Co., 84 O.G., 309. Furthermore, the word "Rose" has heretofore been registered as a trade-mark for tea, and in view of the prior decisions of the office the registration of "FANG-ROSE" cannot consistently be allowed. Ex parte Meriwether & Co., 83 O.G., 1513, and cases therein cited.

The decision of the examiner is affirmed."

(Signed) C. H. Duell,

Commissioner.

December 8, 1898.

Ser. No. 55735

EX PARTE Mary E. Allen.

MS.D. Vol. 68, Page 39.

On appeal from the action of the examiner in refusing to register the words "MALT CREAM" as a trade-mark for an evaporated food preparation, containing rich new milk, malt, salt, and other ingredients, upon the ground that said words are descriptive of the goods to which they are applied, in that they indicate the ingredients and characteristics of applicant's food preparation, it was held as follows:

"Applicant sets forth in the statement forming a part of her application for the trade-mark that it is applied to 'an evaporated food preparation, containing rich new milk, malt,'&c. The principle laid down in ex parte Horlick's Food Co., 84 O.G., 1870, applies to this case, and the decision of the examiner is therefore affirmed."

(Signed) C. H. Duell,

Commissioner.

December 15, 1898.

EX PARTE Mary E. Allen.

MS.D. Vol. 66, Page 39.

On appeal from the action of the examiner in refusing to register the words "MALT CREAM" as a trade-mark for an evaporated food preparation, containing rich new milk, malt, salt, and other ingredients, upon the ground that said words are descriptive of the goods to which they are applied, in that they indicate the ingredients and characteristics of applicant's food preparation, it was held as follows:

"Applicant sets forth in the statement forming a part of her application for the trade-mark that it is applied to 'an evaporated food preparation, containing rich new milk, malt,'&c. The principle laid down in ex parte Horlick's Food Co., 84 O.G., 1870, applies to this case, and the decision of the examiner is therefore affirmed."

(Signed) C. H. Duell,

Commissioner.

December 13, 1898.

Ser. No. 56585

EX PARTE THE G. F. HARVEY COMPANY.

Recorded Vol. 66, Page 60.

Ser. No. 55658

On appeal from the action of the examiner in refusing to register the word "ANTISEPTINE" as a trade-mark for ointment, it was held as follows:

"It seems that a dry dusting powder, termed "Antiseptin", is referred to in "Remington's Practice of Pharmacy," third edition, page 1371, and this application for registration of the word "ANTISEPTINE" stands rejected on reference to that publication. The words are substantially the same, and therefore the latter could not be lawfully registered as a trade-mark for the same article of merchandise. Applicant uses his mark in connection with an ointment.

"While I would have some doubt whether it is good practice to register as a trade-mark for ointment substantially the same word as is applied to a powder, there is nothing in the record to show that Antiseptin as an article of merchandise is upon the market, and that is one reason why I am inclined to resolve the doubt in favor of the applicant.

Furthermore, I am of the opinion that while a careless purchaser would take Antiseptin for Antiseptine, if he did not know that one was a powder and the other an ointment, I do not think a

IN PARTE THE C. F. HARVEY COMPANY.

Recorded Vol. 68, Page 60.

On appeal from the action of the examiner in refusing to
egister the word "ANTISEPTINE" as a trade-mark for ointment,
t was held as follows:

"It seems that a dry dusting powder, termed "Antiseptin",
s referred to in "Remington's Practice of Pharmacy," third edi-
ion, page 1371, and this application for registration of the
rd "ANTISEPTINE" stands rejected on reference to that publica-
ion. The words are substantially the same, and therefore the
atter could not be lawfully registered as a trade-mark for the
me article of merchandise. Applicant uses his mark in connection
ith an ointment.

"While I would have some doubt whether it is good practice to
egister as a trade-mark for ointment substantially the same word
s applied to a powder, there is nothing in the record to show
at Antiseptin as an article of merchandise is upon the market,
d that is one reason why I am inclined to resolve the doubt in
vor of the applicant.

Furthermore, I am of the opinion that while a careless pur-
aser would take Antiseptin for Antiseptine, if he did not know
at one was a powder and the other an ointment, I do not think a

purchaser exercising only slight care would be deceived, provided he knew one was the name applied to a powder and the other to an ointment, notwithstanding the fact that both the powder and the ointment are or may be used for substantially the same purpose. The difference between the ointment and the powder, although both are intended to be used for the same purpose, would be considered by the court passing upon the question of infringement. Sterling Remedy Co. v. Eureka, &c., Co., 80 Fed. Rep., 105. Upon the authority of that case and the earlier case of Societe, &c., v. Baxter, 14 O.G., 679, where Judge Blatchford held that a trade-mark applied to a dry, white oxide of zinc did not prevent the use of the same mark for that article ground in oil, I reverse the action of the examiner."

(Signed) C. H. Duell,

Commissioner.

December 16, 1898.

purchaser exercising only slight care would be deceived, provided he knew one was the name applied to a powder and the other to an ointment, notwithstanding the fact that both the powder and the ointment are or may be used for substantially the same purpose. The difference between the ointment and the powder, although both are intended to be used for the same purpose, would be considered by the court passing upon the question of infringement. Sterling Remedy Co. v. Eureka, &c., Co., 80 Fed. Rep., 105. Upon the authority of that case and the earlier case of Scotch, &c., v. Baxter, 14 O.G., 679, where Judge Blatchford held that a trade-mark applied to a dry, white oxide of zinc did not prevent the use of the same mark for that article ground in oil, I reverse the action of the examiner."

(Signed) C. H. Duell,

Commissioner.

December 10, 1888.

Endorsed January 10, 1899.

U. S. Patent Office.

Ex parte Brass Goods Mfg. Co.

Trade-mark for Safety Pins.

Appeal.

Application for registration filed February 26, 1898, No. 55,217.

On appeal from the action of the examiner in refusing to register "a rectangle traversed by reversed curves, as shown and described, and the parallel lines intersected thereby, and the phrase 'Sensible Safety Pin Book'" as a trade-mark for safety pins upon the ground that the representation claimed is merely the wrapper or package in which the goods are placed and upon the further ground that the words claimed are descriptive of the book or wrapper and the character of the same, the commissioner held as follows: -

"The decision of the examiner is affirmed."

C. H. Duell,
Commissioner.

January 10, 1899.

Endorsed January 10, 1899.

U. S. Patent Office.

Ex parte Christensen & Henderson.

Trade-Mark for Wheat Flour.

Appeal.

Application for registration filed May 27, 1898, No. 55,857.

On appeal from the action of the examiner of trade-marks in refusing to register the word "HIICERES" as a trade-mark for wheat flour on the registered trade-mark of William M. Galt, No. 10,313, May 29, 1883, the word "Ceres", the Commissioner held as follows:

"The decision of the examiner of trade-marks is reversed."

C. H. Duell,
Commissioner.

January 10, 1899.

UNITED STATES PATENT OFFICE.

Ex parte E. Levering & Co.

MS.D., Vol. CC, Page 154.

On appeal from the examiner's refusal to register the words "Royal Pride" as a trade-mark for coffee, upon certain registered trade-marks for the words "Royal Dutch", "Royal Gem", and "Red, White and Blue Royal," the Commissioner held as follows:

"The decision of the examiner is affirmed upon the authority of the cases cited by him.

(Signed) C. H. Duell,

Commissioner.

January 12, 1899.

Ser. No. 56159

UNITED STATES PATENT OFFICE.

Ex parte H. Doverling & Co.

M.D., Vol. 66, Page 184.

On appeal from the examiner's refusal to register the words "Royal Pride" as a trade-mark for coffee, upon certain registered trade-marks for the words "Royal Mutch", "Royal Yen", and "Red, White and Blue Royal," the Commissioner held as follows:

"The decision of the examiner is affirmed upon the authority of the cases cited by him.

(Signed) C. H. Duell,

Commissioner.

January 17, 1900.

UNITED STATES PATENT OFFICE.

Ex parte Henry Tate & Sons.

MS.D., Vol. 66, Page 155.

Ser. No. 56138

On appeal from the action of the examiner in refusing to register a diamond-shaped outline as a trade-mark for granulated sugar, crystal sugar and cube sugar, upon the ground that the said diamond-shaped outline was not the essential feature of applicant's mark, the Commissioner held as follows:

"In this case applicant (a corporation) states 'The trade-mark of said company consists of a diamond-shaped outline;' also that 'the essential feature' of the mark 'is a diamond-shaped outline.'

"The fac-simile presented shows the word 'Tate' enclosed within the diamond-shaped outline, and the description of the mark states:

'This' (the diamond-shaped outline) 'has generally been arranged as shown in the accompanying fac-simile, which represents the trade-mark as used with the word 'Tate' enclosed in the diamond, but the position of the word may be changed and the trade-mark may be used alone * * without materially affecting the character of the trade-mark, the essential feature of which is a diamond-shaped outline.'

"As now presented, the mark sought to be registered - a diamond-shaped outline - is, in my opinion, registrable, and remains so, notwithstanding unregistrable matter is also shown in the fac-simile and referred to in the description, so long, at least, as such matter is a mere accessory, not claimed, not stated to be always used with the mark, and which may be omitted. The unlawful use of the diamond-shaped outline would be an infringement of the trade-mark, if registered as now presented.

"Viewing the case as I do, it follows that the decision of the examiner must be reversed."

(Signed) C. H. Duell,
Commissioner.

January 11, 1899.

UNITED STATES PATENT OFFICE.

Ex parte Henry Tate & Sons.

M.C.B., Vol. 66, Page 185.

On appeal from the action of the examiner in refusing to register a diamond-shaped outline as a trade-mark for granulated sugar, crystal sugar and cube sugar, upon the ground that the said diamond-shaped outline was not the essential feature of applicant's mark, the Commissioner held as follows:

"In this case applicant (a corporation) states 'The trade-mark of said company consists of a diamond-shaped outline;' also that 'the essential feature' of the mark 'is a diamond-shaped outline.'

"The fac-simile presented shows the word 'Tate' enclosed within the diamond-shaped outline, and the description of the mark states:

'This' (the diamond-shaped outline) 'has generally been arranged as shown in the accompanying fac-simile, which represents the trade-mark as used with the word 'Tate' enclosed in the diamond, but the position of the word may be changed and the trade-mark may be used alone x x without materially affecting the character of the trade-mark, the essential feature of which is a diamond-shaped outline.'

"As now presented, the mark sought to be registered - a diamond-shaped outline - is, in my opinion, registrable, and remains so, notwithstanding unregistrable matter is also shown in the fac-simile and referred to in the description, so long, at least, as such matter is a mere accessory, not stated to be always used with the mark, and which may be omitted. The material parts of the diamond-shaped outline would be an infringement of the trade-mark, if registered as now presented.

"Viewing the case as I do, it follows that the decision of the examiner must be reversed."

(Signed) C. H. Duell,
Commissioner.

January 17, 1899.

UNITED STATES PATENT OFFICE.

Ex parte J. William Lewis & Co.

MS.D., Vol. 66, Page 219.

On appeal from the refusal of the examiner to register the words "TOLEDO PREMIUM," as a trade-mark for certain named dry-goods, the Commissioner held as follows:

"That 'Toledo' is geographical, and therefore not a lawful trade-mark, cannot and has not been successfully controverted. Geographical names were not lawful trade-marks prior to 1881, (Canal Co. v. Clark, 13 Wall., 311,) and therefore a geographical word used prior to March 3, 1881, stands in no different position before the office, by reason of the Act of 1882, than such words adopted for use subsequently to that date.

The word 'Premium' is not registrable. It has heretofore been refused registration, (ex parte New England Whalebone Mfg. Co., 51 MS.Dec., 71), and words of similar import have been refused registration or held unlawful trade-marks by the courts.

Taken separately, neither word is subject to appropriation as a lawful trade-mark. The contention that granting that proposition, they nevertheless become a lawful trade-mark when jointly used, seems to be neither founded on reason nor supported by authority.

Two negatives may make an affirmative, but two words, both unregistrable when single, cannot when combined constitute a registrable trade-mark. (Browne on Trade-Marks, Secs. 346,347).

The decision of the examiner is affirmed.

(Signed) C. H. Duell,
Commissioner.

January 27, 1899.

Sec. Int. 5 Cas 57

UNITED STATES PATENT OFFICE.

Ex parte J. William Lewis & Co.

T.M., Vol. 20, Page 211.

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goods, the Commissioner held as follows:

"The 'Premium' is geographical, and therefore not a fanci-
ful word, cannot and has not been successfully contravened.
(Canal Co. v. Clark, 13 Wall., 311.) and therefore a geographical
word used prior to March 3, 1881, stands in no different position
before the office, by reason of the Act of 1882, than such words
adopted for use subsequently to that date.

The word 'Premium' is not registrable. It has heretofore
been refused registration, (ex parte New England Whalebone Mfg.
Co., 31 Mi.Dec., 71), and words of similar import have been re-
fused registration or held unlawful trade-marks by the courts.

[illegible] merely used is [illegible]
as a fanciful trade-mark. The combination that [illegible]
ations, [illegible] Lewis & Co. [illegible]
used, seems to be neither fanciful or arbitrary nor coupled or
associated.

Two registers may make an effective, but two words, each
ungrammatically used singly, cannot [illegible]
register the trade-mark. (Blowing or Trade-Mark, Dec. 160,347).

The decision of the examiner is affirmed.

[illegible] C. [illegible],
Commissioner.

February 27, 1890.

Endorsed January 31, 1899. Recorded Vol. 66, page 243.

U. S. Patent Office.

Ex parte Prendergast & Donovan.

Trade-Mark for Liniments.

Appeal.

Application for registration filed January 15, 1898. Ser. No. 54,984.

On appeal from the action of the examiner in refusing to register as a trade-mark for liniments for the treatment of rheumatism or pain in the muscles or joints, the word "CROWN" and the representation of a crown and the words "Rheumatic Remedy" upon certain references and upon the descriptive character of the words "rheumatic Remedy", the Commissioner held as follows: -

> "The decision of the examiner is affirmed, with leave to applicants to re-present, if they elect, the question in issue to the examiner for further action upon additional papers."

(Signed) C. H. Duell,

Commissioner.

January 31, 1899.

Appeal.

Application for registration filed January 15, 1898. Ser. No. 64,924.

On appeal from the action of the examiner in refusing to

[illegible] mark for [illegible]

[illegible] in the words or [illegible]

[illegible] of a crown and the words "Rheumatic Remedy" upon certain references

[illegible] the descriptive character of the words "[illegible]",

[illegible] Commissioner held as follows: -

"The decision of the examiner is [illegible]
to re-present, if they elect, the question in issue to the examiner for further action upon additional papers."

(Signed) C. H. Duell,

[illegible]

[illegible] 21, 1898.

UNITED STATES PATENT OFFICE.

Ex parte Strauss, Sachs & Co.

MS.D., Vol. 66, P.271.

On appeal from the action of the examiner in refusing to register the word "DEFIANCE" as a trade-mark for skirt binding, because of its geographical signification, the Commissioner held as follows:

"The decision of the examiner of trade-marks in refusing to register the word "Defiance" as a trade-mark for skirt bindings is affirmed on the authority of ex parte Little & Co., 85 O.G., 1221, and the decisions therein referred to.

The affidavit filed by applicants has been considered, but discloses no ground which warrants a reversal of the examiner. The facts disclosed by the record fail to take the case out of the general rule relating to the registry of geographical words.

(Signed) C. H. Duell,

Commissioner.

February 8, 1899.

Ser. No. 57283

UNITED STATES PATENT OFFICE.

Ex parte Strauss, Sachs & Co.

M.D., Vol. 66, P.271.

On appeal from the action of the examiner in refusing to register the word "DEFIANCE" as a trade-mark for skirt binding, because of its geographical signification, the Commissioner held as follows:

"The decision of the examiner of trade-marks in refusing to register the word "Defiance" as a trade-mark for skirt bindings is affirmed on the authority of ex parte Little & Co., 85 O.G., 1221, and the decisions therein referred to.

The affidavit filed by applicants has been considered, but discloses no ground which warrants a reversal of the examiner. The facts disclosed by the record fail to take the case out of the general rule relating to the registry of geographical words.

(Signed) C. H. Duell,

Commissioner.

February 8, 1899.

UNITED STATES PATENT OFFICE.

Ex parte De Moville & Co.

Recorded Vol. 66, Page 229.

On re-hearing of the Commissioner's decision in ex parte for De Moville & Co., 50 MS.D., 14, registration of the words "CRUSHED ROSES" as a trade-mark for perfumery, the Commissioner held as follows:

"This petition is denied. Ex parte Schandein & Lind, 65 MS.D., 185."

(Signed) C. H. Duell,

Commissioner.

February 20, 1899.

UNITED STATES PATENT OFFICE.

Ex parte De Moville & Co.

Recorded Vol. 66, Page 229.

On re-hearing of the Commissioner's decision in ex parte
for
De Moville & Co., 50 MS.D., 14, registration of the words

"CRUSHED ROSES" as a trade-mark for perfumery, the Commissioner

held as follows:

"This petition is denied. Ex parte Schamberg & Kind, 65
MS.D., 186."

(Signed) C. H. Duell,

Commissioner.

February 20, 1899.

Lever Bros., Ltd., v. Pasfield.

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88 Fed. Rep., 484.

"Sunlight is undoubtedly a good trade-mark, and the use of the name 'American Sunlight' in connection with soap is plainly an infringement."

UNITED STATES PATENT OFFICE.

Ex parte Peña Bros.

MS.D. Vol.66, Page 556.

On appeal from the action of the examiner in refusing to register the words "ESCUDO de CUBA" and the representation of a shield having certain bearings thereon, alleged to be the coat of arms of Cuba, as a trade-mark for saws, the Commissioner held as follows:

"As presented the mark is not considered to be registrable, and the decision of the examiner is affirmed.

Should applicants elect to file an amended drawing, omitting the words "Escudo de Cuba" and their firm name and address, together with an amended statement, clearly describing the mark and its essential features, they may be entered, and the application further considered by the examiner."

(Signed) C. H. Duell,

Commissioner.

March 4, 1899.

Ser. No. 57533

UNITED STATES PATENT OFFICE.

Ex parte Peña Bros.

M.D. Vol.66, Page 556.

On appeal from the action of the examiner in refusing to register the words "ESCUDO de CUBA" and the representation of a shield having certain bearings thereon, alleged to be the coat of arms of Cuba, as a trade-mark for rums, the Commissioner held as follows:

"As presented the mark is not considered to be registrable, and the decision of the examiner is affirmed.

Should applicants elect to file an amended drawing, omitting the words "Escudo de Cuba" and their firm name and address, together with an amended statement, clearly describing the mark and its essential features, they may be entered, and the application further considered by the examiner."

(Signed) C. H. Duell,

Commissioner.

March 4, 1899.

UNITED STATES PATENT OFFICE.

Ex parte Hewlett & Lee.

MS.D. Vol.66, Page 357.

On appeal from the action of the examiner in refusing to register the representation of a Chinese Bat in peculiar type and style of Chinese art, the Bat represented as holding in its mouth a stem on which peaches and peach leaves are suspended, as shown, as a trade-mark for cotton cloth, upon registered trade-mark of Fearon, Low & Co., #12,380, dated July 7, 1885, the essential features of which being the Chinese picture of a bat, and the class of goods the same, the Commissioner held as follows:

"The decisions of this office in ex parte Meriwether & Co., 83 O.G., 1513, ex parte Kaufmann & Blache, 84 O.G., 145, and ex parte Flint & Walling Mfg. Co., 85 O.G., 148, are controlling upon the point presented by this appeal. I can find nothing in the record or in applicants' brief to distinguish this case from the cases above referred to.

The decision of the examiner is therefore affirmed."

(Signed) C. H. Duell,

Commissioner.

March 4, 1899.

Ser. No. 56961

UNITED STATES PATENT OFFICE.

Ex parte Hewlett & Lee.

M.S.D. Vol.88, Page 357.

On appeal from the action of the examiner in refusing to register the representation of a Chinese Bat in peculiar type and style of Chinese art, the Bat represented as holding in its mouth a stem on which peonies and peach leaves are suspended, as shown, as a trade-mark for cotton cloth, upon registered trade-mark of Pearon, Low & Co., #12,380, dated July 7, 1885, the essential features of which being the Chinese picture of a bat, and the class of goods the same, the Commissioner held as follows:

"The decisions of this office in ex parte Merriweather & Co., 85 O.G., 1515, ex parte Kaufmann & Blaohs, 84 O.G., 145, and ex parte Flint & Walling Mfg. Co., 86 O.G., 148, are controlling upon the point presented by this appeal. I can find nothing in the record or in appellants' brief to distinguish this case from the cases above referred to.

The decision of the examiner is therefore affirmed."

(Signed) C. H. Duell,

Commissioner.

March 4, 1899.

UNITED STATES PATENT OFFICE.

Ex parte Manilla Mfg. Co.

MS.D.Vol.66, Page 358.

On appeal from the action of the examiner in refusing to register a label entitled "MANILLA CURE," to be used on salve, the Commissioner held as follows:

"The decision of the primary examiner is affirmed."

(Signed) A. P. Greeley,

Assistant Commissioner.

March 6, 1899.

See Ex 57577

UNITED STATES PATENT OFFICE.

Ex parte Manilla Mfg. Co.

MS.D.Vol.66, Page 558.

On appeal from the action of the examiner in refusing to register a label entitled "MANILLA CURE," to be used on saliva, the Commissioner held as follows:

"The decision of the primary examiner is affirmed."

(Signed) A. P. Greeley,

Assistant Commissioner.

March 6, 1899.

UNITED STATES PATENT OFFICE.

Ex parte Hewlett & Lee.

MS.D., Vol. 66, Page 379.

On appeal from the action of the examiner in refusing to register "the representation of a Chinese Dog in the peculiar and typical style of Chinese art, as shown," as a trade-mark for cotton cloth, on the registered mark of the Massachusetts Cotton Mills, #13,940, dated Jan. 4, 1897, the Commissioner held as follows:

"Applicants describe their mark as "the representation of a Chinese dog in the peculiar and typical style of Chinese art." The dog differs materially in appearance from the dog shown in the reference, but notwithstanding the differences, both are referred to as dogs, and the brand under which the merchandise of the two parties, to which the marks are applied, would be sold, would, in my opinion, be the "Dog" brand. Furthermore, the registrant and applicants use their marks upon the same goods and their foreign trade is with the same country. Registrant states that the mark is stamped upon the goods with blue ink, which is the color of the ink employed by applicants, as shown by the sample of the mark furnished.

As presented the mark does not appear to be registrable, and therefore the decision of the examiner is affirmed."

(Signed) C. H. Duell,

Commissioner.

March 10, 1899.

Ser. No. 56960

UNITED STATES PATENT OFFICE.

Ex parte Hewlett & Lee.

M.D., Vol. 66, Page 579.

On appeal from the action of the examiner in refusing to register "the representation of a Chinese Dog in the peculiar and typical style of Chinese art, as shown," as a trade-mark for cotton cloth, on the registered mark of the Massachusetts Cotton Mills, #13,945, dated Jan. 4, 1887, the Commissioner held as follows:

"Applicants describe their mark as "the representation of a Chinese dog in the peculiar and typical style of Chinese art." The dog differs materially in appearance from the dog shown in the reference, but notwithstanding the differences, both are referred to as dogs, and the brand under which the merchandise of the two parties, to which the marks are applied, would be sold, would, in my opinion, be the "Dog" brand. Furthermore, the registrant and applicants use their marks upon the same goods and their foreign trade is with the same country. Registrant states that the mark is stamped upon the goods with blue ink, which is the color of the ink employed by applicants, as shown by the sample of the mark furnished.

As presented the mark does not appear to be registrable, and therefore the decision of the examiner is affirmed."

(Signed) C. H. Duell,

Commissioner.

March 10, 1899.

UNITED STATES PATENT OFFICE.

Ex parte RICHARDSON.

MS.D., Vol. 66, page 387.

On appeal from the action of the examiner in refusing to register the compound word "Vin-Rye" as a trade-mark for whiskey upon the descriptive and deceptive character of the said word, the Commissioner held as follows: -

"The decision of the examiner of trade-marks is affirmed."

C. H. Duell, (Signed)
Commissioner.

March 18, 1899.

Ser. No. 57534

UNITED STATES PATENT OFFICE.

Ex parte NICHOLSON.

(C.D., Vol. 66, page 867.

On appeal from the action of the ex-amr in rejection to register the compound word "Vin-lye" as a trade-mark for whiskey upon the descriptive and deceptive character of the word, the Commissioner held as follows: -

"The decision of the examiner of trade-marks is affirmed."

C. H. Duell, (Signed)

Commissioner.

March 15, 1899.

UNITED STATES PATENT OFFICE.

Ex parte A. F. Richardson,

Endorsed March 17, 1899.

On appeal from the action of the examiner in refusing to register the word "Epilepticidé" as a trade-mark for a remedy for the cure of epilepsy and nervous diseases, upon the ground of the descriptive character of the word, and under the authority of ex parte Wolf, 80 O. G., 1271, the Commissioner held as follows: -

"The decision of the examiner of trade-marks is reversed."

C. H. Duell, (Signed)

Commissioner.

March 17, 1899.

Ser. No. 55174

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